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Proposed
by U. S. Comptroller
in U. S. Arbitral
Court
1824 - before
Wharf, Vancouver

Tribunal of Arbitration under Treaty and Convention between Great Britain and the United States of America relating to Behring Sea.

INTRODUCTION TO CASE.

A REFERENCE to the accompanying Map will show "Behring Sea" to be the northern portion of the Pacific Ocean, lying between Behring Strait on the north and the Aleutian Islands and Peninsula on the south.

The area of this sea may be said to be at least two-thirds as great as that of the Mediterranean, and more than twice that of the North Sea.

From the southern to the northern part of what are now known as the North and South Pacific Oceans was in the beginning of this century termed the Pacific or South Sea, being reached in the days of Cook and Vancouver by sailing south, rounding "The Cape," or doubling "The Horn."

This sea is the ~~world's~~ highway to the Arctic ~~Ocean~~. It is ~~Great Britain's~~ highway to her possessions in the north via the Yukon River.

In 1886 the British schooner "Thornton" was arrested when 70 miles south-east of St. George Island.

The vessel was libelled in a District Court of the United States by the District Attorney.

The charge being that the vessel was "and engaged in killing fur-seal within the limits of Alaska Territory and in the waters thereof, in violation of Section 1956 of the Revised Statutes of the United States."

The "Thornton," "Anna Beck," and "W. P. Sayward," were all condemned in 1887 by the District Court of Alaska upon the ~~stated~~ ground that Russia had ceded not only Alaska and the islands within certain limits of Behring Sea, but the sea itself within those limits.

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Great Britain formally protested against this action on the part of the United States, and negotiations took place, ~~which resulted in a~~ Treaty and Convention being entered into at Washington on the 29th February and the 25th April, 1892.

This Treaty declares that Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the United States of America, being desirous to provide for an amicable settlement of the questions which have arisen between their respective Governments concerning the jurisdictional rights of the United States in the waters of Behring Sea, and concerning also the preservation of the fur-seal in or habitually resorting to the said sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seal in or habitually resorting to the said waters, have resolved to submit to Arbitration the questions involved, and to the end of concluding a Convention for that purpose have appointed their Plenipotentiaries, &c.

By Article I it is provided that the questions which have arisen between their respective Governments concerning the jurisdictional rights of the United States in the waters of Behring Sea, and concerning also the preservation of the fur-seal in or habitually resorting to the said sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seal in or habitually resorting to the said waters, shall be "submitted to a Tribunal of Arbitration to be composed of seven Arbitrators," to be appointed as therein specified.

By Article VI it is provided that:—

"In deciding the matters submitted to the Arbitrators, it is agreed that the following five points shall be submitted to them, in order that their award shall embrace a distinct decision upon each of said five points, to wit:—

"1. What exclusive jurisdiction in the sea now known as the Behring Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States ?

"2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain ?

"3. Was the body of water now known as the Behring Sea included in the phrase 'Pacific Ocean,' as used in the Treaty of 1825 between Great Britain and Russia, and what rights, if any, in the Behring Sea were held and exclusively exercised by Russia after said Treaty ?

"4. Did not all the rights of Russia as to jurisdiction, and as to the seal fisheries in Behring Sea east of the water boundary, in the Treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that Treaty?

"5. Has the United States any right, and, if so, what right, of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary 3-mile limit?"

By Article VII it is provided that :—

"If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in, or habitually resorting to, the Behring Sea, the Arbitrators shall then determine what concurrent Regulations outside the jurisdictional limits of the respective Governments are necessary, and over what waters such Regulations should extend, and to aid them in that determination, the Report of a Joint Commission, to be appointed by the respective Governments, shall be laid before them, with such other evidence as either Governments may submit.

"The High Contracting Parties furthermore agree to co-operate in securing the adhesion of other Powers to such Regulations."

By Article VIII it is provided that :—

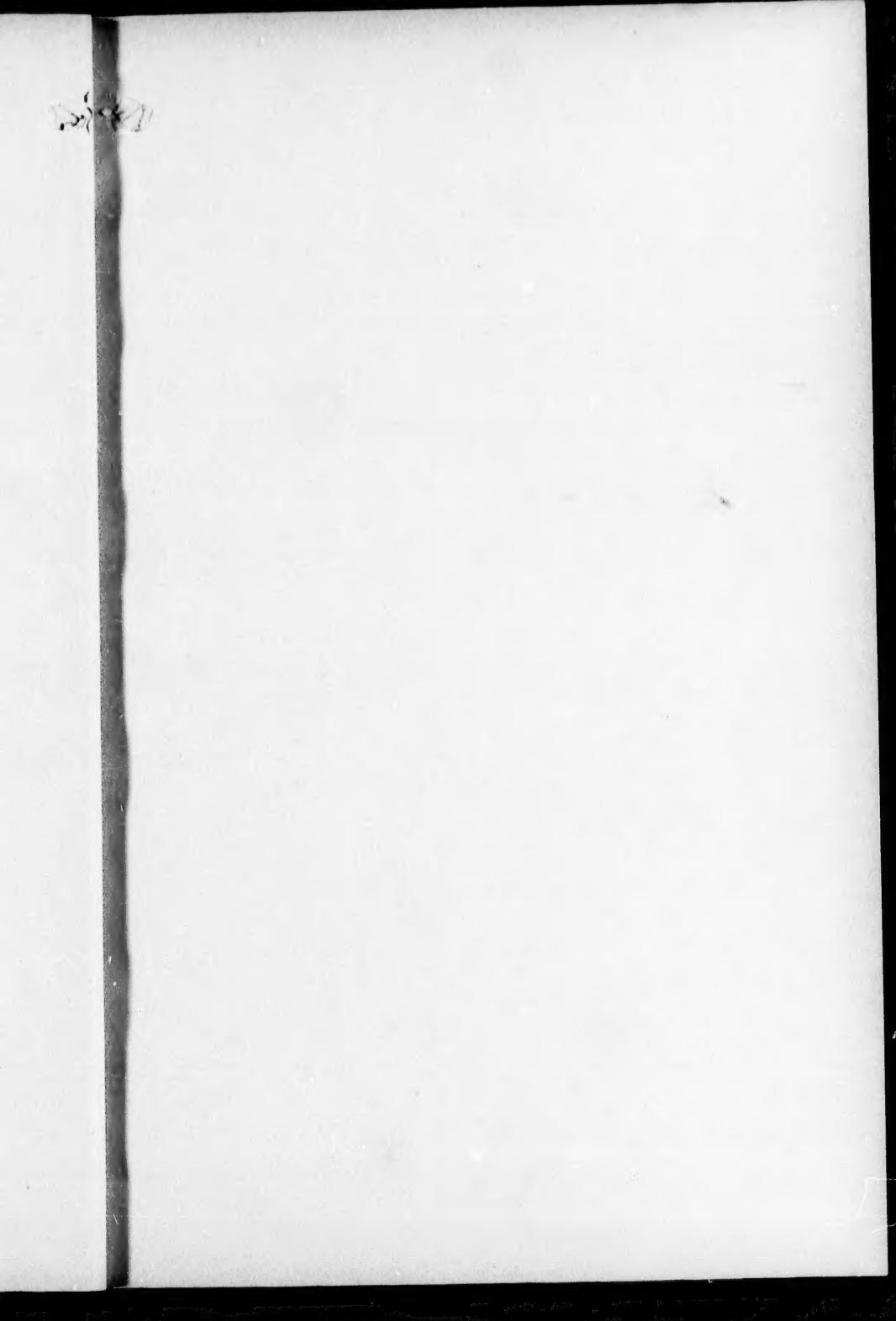
"The High Contracting Parties having found themselves unable to agree upon a reference which shall include the question of the liability of each for the injuries alleged to have been sustained by the other, or by its citizens, in connection with the claims presented and urged by it; and, being solicitous that this subordinate question should not interrupt or longer delay the submission and determination of the main questions, do agree that either may submit to the Arbitrators any question of fact involved in said claims, and ask for a finding thereon, the question of the liability of either Government upon the facts found to be the subject of further negotiation."

Article IX :—

"The High Contracting Parties having agreed to appoint two Commissioners on the part of each Government to make the joint investigation and Report contemplated in the preceding Article VII, and to include the terms of the said Agreement in the present Convention, to the end that the joint and several Reports and recommendations of said Commissioners may be in due form submitted to the Arbitrators, should the contingency therefor arise, the said Agreement is accordingly herein included as follows :—

"Each Government shall appoint two Commissioners to investigate, conjointly with the Commissioners of the other Government, all the facts having relation to seal life

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in Behring Sea, and the measures necessary for its proper protection and preservation.

"The four Commissioners shall, so far as they may be able to agree, make a joint Report to each of the two Governments, and they shall also report, either jointly or severally, to each Government on any points upon which they may be unable to agree.

"These Reports shall not be made public until they shall be submitted to the Arbitrators, or it shall appear that the contingency of their being used by the Arbitrators cannot arise."

at present
 The subject of Article VII has, not been
~~dealt with~~ ~~considered~~ in the British Case, as it appears
 that the determination of the question under
 Article VI of the Convention is necessary before
 the Arbitrators are called upon to ~~deal with~~ consider
the question in VII.

This much -

It must be insisted by
B. M. R. & Co. and by
more assertive ~~and~~ in
to say a claim to a
attempt to exercise an
alleged right acquire
any exclusive jurisdiction over S. J.

At beginning of this Chapter

will find three questions from
which it often goes on

should be dealt

first with Article 1, which relates to
Russia's claim to certain rights in
the Pacific Ocean. — ~~but not to~~

The next question is
that of 1821 and the
rights claimed by Russia
in the Pacific Ocean. — ~~but not to~~

The question which the body of
W. New Haven in A. Sea are
willing to let them P. O.
as used in the T. of 1825 (but not to)

J. B. Thompson
The term of the w. is g. from
1825 to 1857

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over A. Ocean in U. ?

The q. is then raised into the
consideration under the following heading
in A. & S. on

~~This
matter authorities
Chronological order~~

CASE.

CHAPTER I.

POINTS I AND II.—The Case of Paul and the
Use of the Waters in question from 1741 to
1821.

It will be seen that

Points 1, 2, 3, and 4 relate to Russia's claim to
Bering Sea, and to the transfer of Alaska and
certain islands in part of that sea to the United
States of America.

Point 5 raises a question as to the property in
seals.

It is submitted by Great Britain that the
mere assertion, if by assertion be meant a claim
and an attempt to assert it, or by the exercise of
exclusive authority, Russia could have acquired
any jurisdiction over Bering Sea.

The following position was, it is submitted,
correctly taken by the United States, and, it is
presumed, will be adhered to by that country
to-day.

In 1862, Spain pushed her claim to an
extended jurisdiction around the Island of Cuba.
Secretary Seward's response was:—

"It cannot be admitted, nor, indeed, is Mr. Tessier
understood to claim, that the mere assertion of a Sovereign,
by an act of legislation, however solemn, can have the
effect to establish and fix its external maritime jurisdiction
.... He cannot, by a mere Decree, extend the
limit and fix it at 6 miles, because, if he could, he could
in the same manner, and upon motives of interest,
ambition, and even upon caprice, fix it at 10, or 20, or
50 miles, without the consent or acquiescence of other
Powers which have a common right with himself in the
freedom of all the oceans. Such a pretension could never
be successfully or rightfully maintained."

The following authorities also refer to this:—

Phillimore I, § 174—

"The right of navigation, fishing, and the like upon the
open sea, being *jura mera facultatis*, rights which do not
require a continuous exercise to maintain their validity,
but which may or may not be exercised according to the
free will and pleasure of those entitled to them, can neither
be lost by non-user or prescribed against, nor acquired to
the exclusion of others by having been immemorially exer-
cised by one nation only. No presumption can arise that
those who have not hitherto exercised such rights have
abandoned the intention of ever doing so."

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Calvo recognizes the temptation which the proximity to the coast of "fish, oysters, and other shell-fish" affords to nations to extend their sovereignty beyond the 3-mile limit. Yet, instead of permitting such an extension, especially when supported by long use, he distinctly says:—

"Si de pareilles dérogations aux principes universellement reconnus ont lieu, c'est qu'elles sont dictées par un intérêt maritime de premier ordre, notamment l'exploitation de pêches côtières d'une nature exceptionnelle, des bancs d'huîtres ou autres coquillages; il faut qu'elles se renferment dans la limite de l'objet spécial qui les a fait adopter; et elles ont besoin pour devenir obligatoires d'être sanctionnées par des *Conventions expresses et écrites*."

a plain law
The reason which flows from the nature of prescription, however, is sufficient to establish the point in question, without the aid of authority. Unlike adverse possession or limitation, prescription rests for its validity on a presumed prior grant. Now, in international law there is no room for such a presumption. National archives are not so susceptible of oblivion and destruction as to call it into existence.

ground upon /

Adverse possession and limitation have place in marine international law.

The controversy between Grotius and Selden as to the right of appropriation by a nation of the sea beyond the immediate vicinity of the coast is thus reviewed by Wheaton:—

"There are only two decisive reasons applicable to the question. The first is physical and material, which would alone be sufficient, but when coupled with the second reason, which is purely moral, will be found conclusive of the whole controversy:—

"1. Those things which are originally the common property of all mankind can only become the exclusive property of a particular individual or society of men by means of possession. In order to establish the claim of a particular nation to a right of property in the sea, that nation must obtain and keep possession of it, which is impossible.

"2. In the second place, the sea is an element which belongs equally to all men, like the air. No nation, then, has the right to appropriate it, even though it might be physically possible to do so.

"It is thus demonstrated that the sea cannot become the *Cf. Ortolan,* exclusive property of any nation. And, consequently, the "Diplomatie de la Mer," tom. I., pp. 190-126.

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In a note on the foregoing passage of Wheaton, Mr. Dana adds that—

"The right of one nation to an exclusive jurisdiction over an open sea was, as stated in the text, vested solely on a kind of prescription. But, however long acquiesced in, such an appropriation is inadmissible in the nature of things, and whatever may be the evidence of the time or nature of the use it is set aside as a bad usage, which no evidence can make legal.

It will be contended, moreover, that the concession or recognition of Russia's claims to jurisdiction over any particular seal fisheries—if ever made—on the part of one of the Powers could not invest Russia with a title or property according to the principles of international law and the practice of nations.

Taking up Points 1 and 2 together for the sake of convenience, the various Points under Article VI will be examined in their order and in the light of the general reference under Article I.

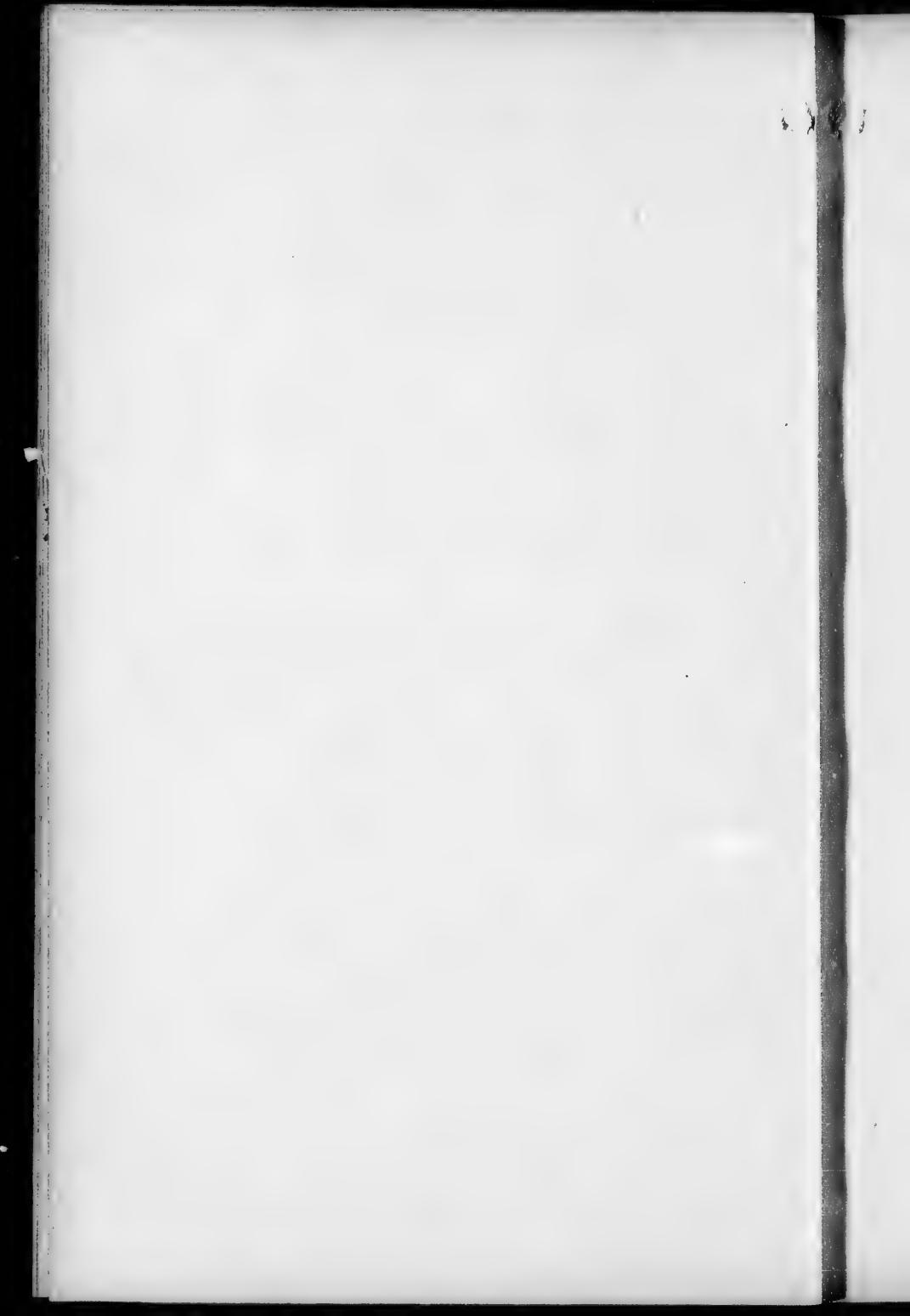
Their two Points are:—

(1.) *What exclusive jurisdiction in the sea, now known as the Behring Sea, and what exclusive rights in the seal fisheries therein did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?*

(2.) *How far were these claims to jurisdiction as to the seal fisheries recognized and conceded by Great Britain?*

In 1786, the idea became dominant with Shelikof, who had lately established the first permanent Colony of Kodiak, of a Company which should hold a monopoly of trade in the Russian possessions on the Pacific, and over all that part of the American Continent to which Russian traders resorted. Shelikof obtained but a partial success in the Charter issued for the United American Company; but after his death at Iskutsk in 1795, his ambitious schemes were taken up by his son-in-law Rezanof, who succeeded in carrying them to completion, and, in 1799, a Ukaas was issued which granted the wished-for exclusive privileges to the new Russian-American Company. Before this time, in 1798, a consolidation of the Shelikof Company with several smaller concerns had been effected under the name of the United American Company; and at the date of the

Reference:





issuance of the Ukase there were but two rival Companies of importance in the field, the Shelikof or United American Company, and the Sebedef Company, and there engaged in active hostility. About 1791 and 1792 Bancroft sums up the situation in the following words:—

21.

"Affairs were assuming a serious aspect; not only were the Shelikof men excluded from the greater part of the inlet (Cook's Inlet), but they were opposed in their advance towards Prince William Sound, which was also claimed by the Sebedef faction, though the Orkhoft and other Companies were hunting there. . . . Thus the history of Cook Inlet during the last decade of the eighteenth century is replete with romantic incidents—midnight raids, ambuscades, and open warfare—resembling the doings of mediæval *ravrikters* rather than the exploits of peaceable traders. . . . Robbery and brutal outrage continued to be the order of the day, though now committed chiefly for the purpose of obtaining sole control of the inlet, to the neglect of legitimate pursuits."

W. J. S. Again, in another place, the same author writes, with regard especially to the position of Baranoff when he took charge of the Shelikof Colony of Kodiak:—

"Thus, on every side, rival establishments and traders were draining the country of the valuable staple upon which rested the very existence of the scheme of colonization. To the east and north there were Russians, but to the south-east the ships of Englishmen, Americans, and Frenchmen were also traversing the tortuous channels of the Alexander Archipelago reaping rich harvests of sea-otter skins in the very region where Baranoff had decided to extend Russian dominion in connection with Company away."

It was only in the later years of the competition between the rival Russian Companies that they began to assume hostile attitudes one to another. The growing power of some of them favoured the assumption of this position; and the increasing scarcity of the sea-otter, which was already beginning to be felt, accentuated this hostility. At first, and for many years after Behring's initial voyage, the ~~raude~~ traders from Siberia contented themselves with robbing the natives of the lands and coverts visited by them in every conceivable way. Tribute in furs was exacted from the Aleuts on various pretexts, and whenever the traders came in sufficient force these people were virtually enslaved. Not only were the companies of traders under no sufficient or recognized control by the Russian Govern-

Ibid., pp. 302, 391,
393.

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ment, but they even disliked and resented in some measure the advent or presence among them of commissioned officers of the Government.

Bancroft, Alaska,
p. 301.

Ibid., p. 299.

The effect of the reports of the subordinate members of Billing's expedition, as to the unsatisfactory state of affairs in the Aleutian Islands and on the American coast, tended to favour the project of the establishment of a monopoly, by disclosing the abuses which existed by reason of the existing competition. Bancroft more than hints that bribery closed the mouths of the superior officers; and Billing's Report, whatever its tenour may have been, was never published.

In the end it became in a degree imperative for the Russian Government to put a stop to the scandals and abuses which flourished in this remote and scarcely more than nominally controlled portion of the Empire, and the easiest way in which this could be done, and the least expensive, was to put exclusive rights in the hands of the most powerful of the existing rival Companies. This being also in the interests of the Company in question was not found difficult of achievement, and, as a consequence of the Ukase of 1799 and the absorption of the smaller concerns, appears to have followed without any great difficulty, Baranoff^A as the executive head of the new Corporation on the American coast, coming to the front as the natural leader.

Ibid., p. 308.

When Shelikof presented his initial petition for the right to monopolize the trade, at St. Petersburgh, a Report was asked for on the subject from Jacobi, the Governor-General of Eastern Siberia, and in Jacobi Shelikof found an able advocate. Jacobi stated that it would be only just to Shelikof to grant his request, that it would be unfair to allow others to enjoy the benefits of the peace which Shelikof had established at Kodiak."

Ibid., p. 309.

The Empress then ordered the Imperial College of Commerce to examine the question, and a Committee of this body endorsed Jacobi's Report and recommended that the request of Shelikof and Solikof for exclusive privileges should be granted.

Though among the arguments advanced in favour of the grant of a monopoly we find it urged that the benefits of trade accruing should be reserved to Russian subjects, the history of



16 Aug. 1894
S. S. S.

the occupation of the coasts and the records concerning it show conclusively that this object was among the least of those which practically induced Shelikof to apply for such a monopoly. His Company had the utmost difficulty in sustaining its position against hostile natives, while not less serious were the difficulties arising from the competition, and scarcely veiled hostility of rival Russian traders. The increasing trade by foreigners, together with the numerous exploring and surveying expeditions dispatched to the north-west coast of America by various Powers were no doubt distrusted by the Russian traders, but at the same time these traders were often obliged to depend on such foreigners for support and assistance. Nowhere in the annals of the times previous to, and during the operation of the Ukase of 1799, do we find any reference to attempts to interfere with, or restrict the operations of, foreigners upon the American coasts or in the Aleutian Islands. Even the scientific expeditions of the period were often largely interested in trade as well as in exploration, but all vessels meeting with the Russians report a favourable, if not a hospitable, reception.

Such an attitude on the part of the traders and the Company is, in fact, strictly in accord with the Ukase of 1799, which is purely domestic in its character, and in which no exclusive rights against foreigners are asserted.

It must further be remembered that the trade in furs or the hunting of fur-bearing animals on or in the immediate vicinity of the coast were, during practically the whole time covered by the Ukase of 1779, the only objects which it was desired to safeguard, and that foreigners were even admitted to share in these without question. No sea fisheries properly so called had been developed. The whale fishery had not extended to the North Pacific, and even down to the latest period of the Russian occupation of America the modes of taking the fur-seal at sea had not been practically developed.

The first definite instance of any grant of rights or attempt to exercise jurisdiction on the part of Russia in that region was by a Ukase granted by Paul I to the Russian-American Company, of which the following is a literal translation taken from "Golovnin," in "Materialiui," i., 77-80:—

Ukase of Paul I,
1799.

*of this
Ukase in
question*

Baneroff's works,
vol. xxiii, History
of Alaska, 1730-
1885, pp. 379-380.

"By the grace of a merciful God, we, Paul I, Emperor and Autocrat of All the Russias, &c. To the Russian-American Company, under our highest protection, the benefits and advantages resulting to our Empire from the hunting and trading carried on by our loyal subjects in the north-eastern seas and along the coasts of America have attracted our Royal attention and consideration; therefore, having taken under our immediate protection a Company organized for the above-named purpose of carrying on hunting and trading, we allow it to assume the appellation of 'Russian-American Company under our highest protection,' and for the purpose of aiding the Company in its enterprises, we allow the Commanders of our land and sea forces to employ said forces in the Company's aid if occasion requires it, while for further relief and assistance of said Company, and having examined their Rules and Regulations, we hereby declare it to be our highest Imperial will to grant to this Company for a period of twenty years the following rights and privileges:—

"1. By the right of discovery in past times by Russian navigators of the north-eastern part of America, beginning from the 55th degree of north latitude and of the chain of islands extending from Kamtschatka to the north to America and southward to Japan, and by right of possession of the same by Russia, we most graciously permit the Company to have the use of all hunting grounds and establishments now existing on the north-eastern [sic] coast of America, from the above-mentioned 55th degree to Behring Strait, and on the same also on the Aleutian, Kurile, and other islands situated in the north-eastern ocean.

"2. To make new discoveries not only north of the 55th degree of north latitude but farther to the south, and to occupy the new lands discovered, as Russian possessions, according to prescribed rules, if they have not been previously occupied by any other nation, or been dependent on another nation.

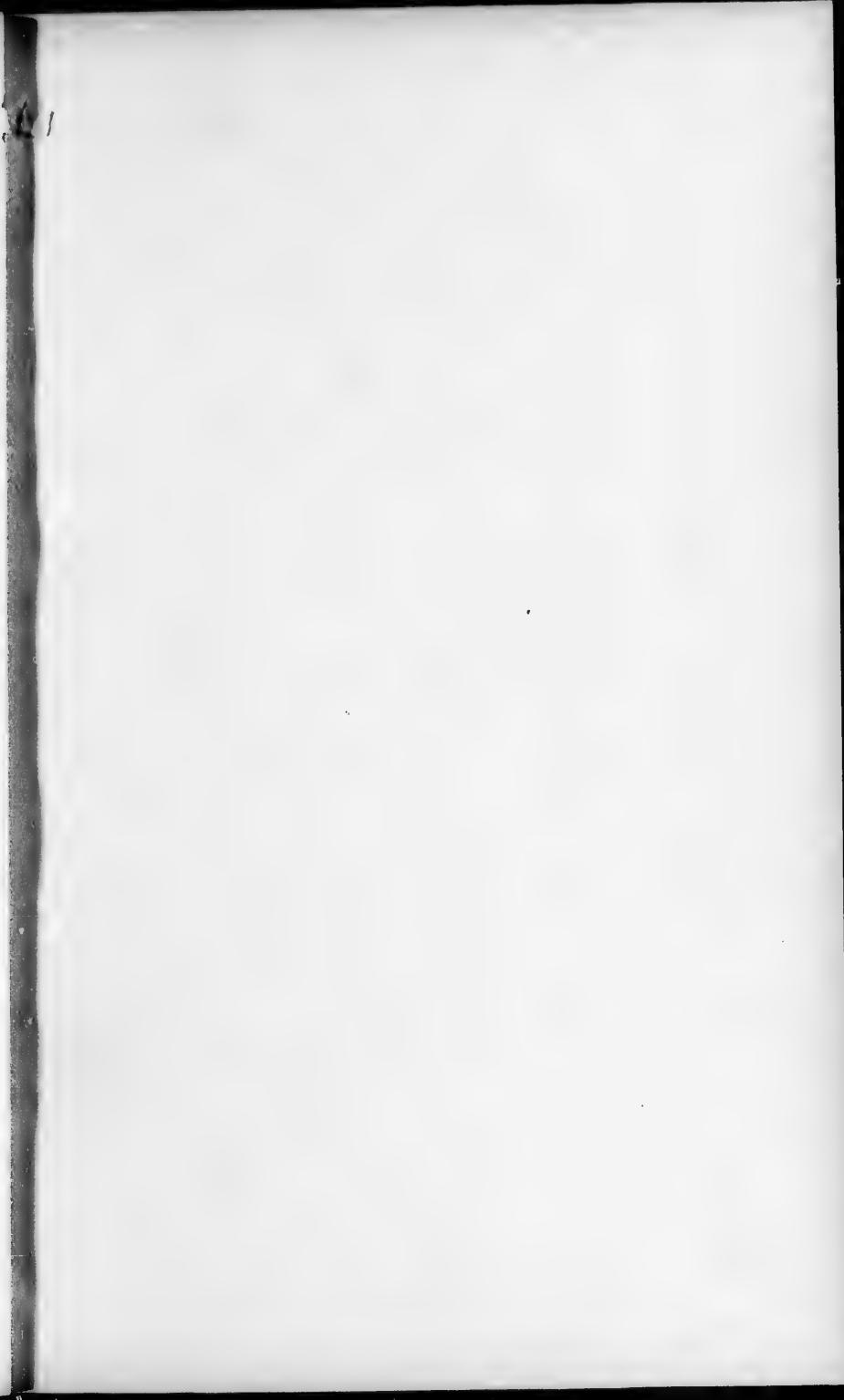
"3. To use and profit by everything which has been or shall be discovered in those localities, on the surface and in the bosom of the earth, without any competition by others.

"4. We most graciously permit this Company to establish Settlements in future times, wherever they are wanted, according to their best knowledge and belief, and fortify them to insure the safety of the inhabitants, and to send ships to those places with goods and hunters, without any obstacles on the part of the Government.

"5. To extend their navigation to all adjoining nations and hold business intercourse with all surrounding Powers, upon obtaining their free consent for the purpose, and under our highest protection, to enable them to prosecute their enterprises with greater force and advantage.

"6. To employ for navigation, hunting, and all other business, free and unsuspected people, having no illegal views or intentions. In consideration of the distance of the localities where they will be sent, the provincial autho-





rities will grant to all persons sent out as settlers, hunters, and in other capacities, passports for seven years. Serfs and house-servants will only be employed by the Company with the consent of their land-holders, and Government taxes will be paid for all serfs thus employed.

" 7. Though it is forbidden by our highest order to cut Government timber anywhere without the permission of the College of Admiralty, this Company is hereby permitted, on account of the distance of the Admiralty from Okhotsk, when it needs timber for repairs, and occasionally for the construction of new ships, to use freely such timber as is required.

" 8. For shooting animals, for marine signals, and on all unexpected emergencies on the mainland of America and on the islands, the Company is permitted to buy for cash, at cost price, from the Government artillery magazine at Irkutsk yearly 40 lbs. or 50 lbs. of powder, and from the Nertchinsk mine 200 lbs. of lead.

" 9. If one of the partners of the Company becomes indebted to the Government or to private persons, and is not in a condition to pay them from any other property except what he holds in the Company, such property cannot be seized for the satisfaction of such debts, but the debtor shall not be permitted to use anything but the interest or dividends of such property until the term of the Company's privileges expires, when it will be at his or his creditors' disposal.

" 10. The exclusive right most graciously granted to the Company for a period of twenty years, to use and enjoy, in the above-described extent of country and islands, all profits and advantages derived from hunting, trade, industries, and discovery of new lands, prohibiting the enjoyment of those profits and advantages not only to those who would wish to sail to those countries on their own account, but to all former hunters and trappers who have been engaged in this trade, and have their vessels and furs at those places; and other Companies which may have been formed will not be allowed to continue their business unless they unite with the present Company with their free consent; but such private Companies or traders as have their vessels in those regions can either sell their property, or, with the Company's consent, remain until they have obtained a cargo, but no longer than is required for the loading and return of their vessel; and after that nobody will have any privileges but this one Company, which will be protected in the enjoyment of all the advantages mentioned.

" 11. Under our highest protection, the Russian-American Company will have full control over all above-mentioned localities, and exercise judicial powers in minor cases. The Company will also be permitted to use all local facilities for fortifications in the defence of the country under their control against foreign attacks. Only partners of the Company shall be employed in the administration of the new possessions in charge of the Company.

" In conclusion of this our most gracious order for the benefit of the Russian-American Company under highest

protection, we enjoin all our military and civil authorities in the above-mentioned localities not only not to prevent them from enjoying to the fullest extent the privileges granted by us, but in case of need to protect them with all their power from loss or injury, and to render them, upon application of the Company's authorities, all necessary aid, assistance, and protection.

"To give effect to this our most gracious Order, we subscribe it with our own hand, and give orders to confirm it with our Imperial seal.

"Given at St. Petersburg, in the year after the birth of Christ 1799, the 27th day of December, in the fourth year of our reign.

(Signed) "PAUL."

The Ukase, it will be observed, granted to the Russian-American Company exclusive rights as against other Russian subjects only, and made no reference to foreigners, ~~as did the Ukase of 1821~~

The rights and privileges under the grant extended to the hunting grounds and establishments then existing on the main coast of America from Behring Strait down to the 55th degree of north latitude.

The southern limit of the exclusive coast privileges granted to the Company extended to Japan.

Not only were the main coasts of Asia and America covered by the Ukase, but the same privileges were granted on the Aleutian, Kurile, and other islands "situated in the North Eastern Ocean."

Special privileges in the purchase of powder for shooting animals "on the mainland of America and on the islands" were conceded, and the exclusive right "to use and enjoy in the above-described extent of country and islands" the hunting and trading.

~~It plainly made no claim to exclusive jurisdiction over the sea, nor were any measures taken under it to restrict the commerce, navigation, or fishery of the subjects of foreign nations.~~

On the contrary, within the very area of the Ukase ~~discoverers~~ were still engaged exploiting the various waters; whalers had not yet reached them, and pelagic hunting had not begun, but in ~~1741~~ Behring's second expedition, which sailed from Okhotsk, resulted in the discovery of the American coast.

Uncertain as the voyages of Behring undoubtedly were from a geographical view, it

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will be observed that the
privileges mentioned above
were granted to the Russian
Co. included both in the Co.
of Asia & America, ~~as well as~~
the Co. of the Am. & Asia.

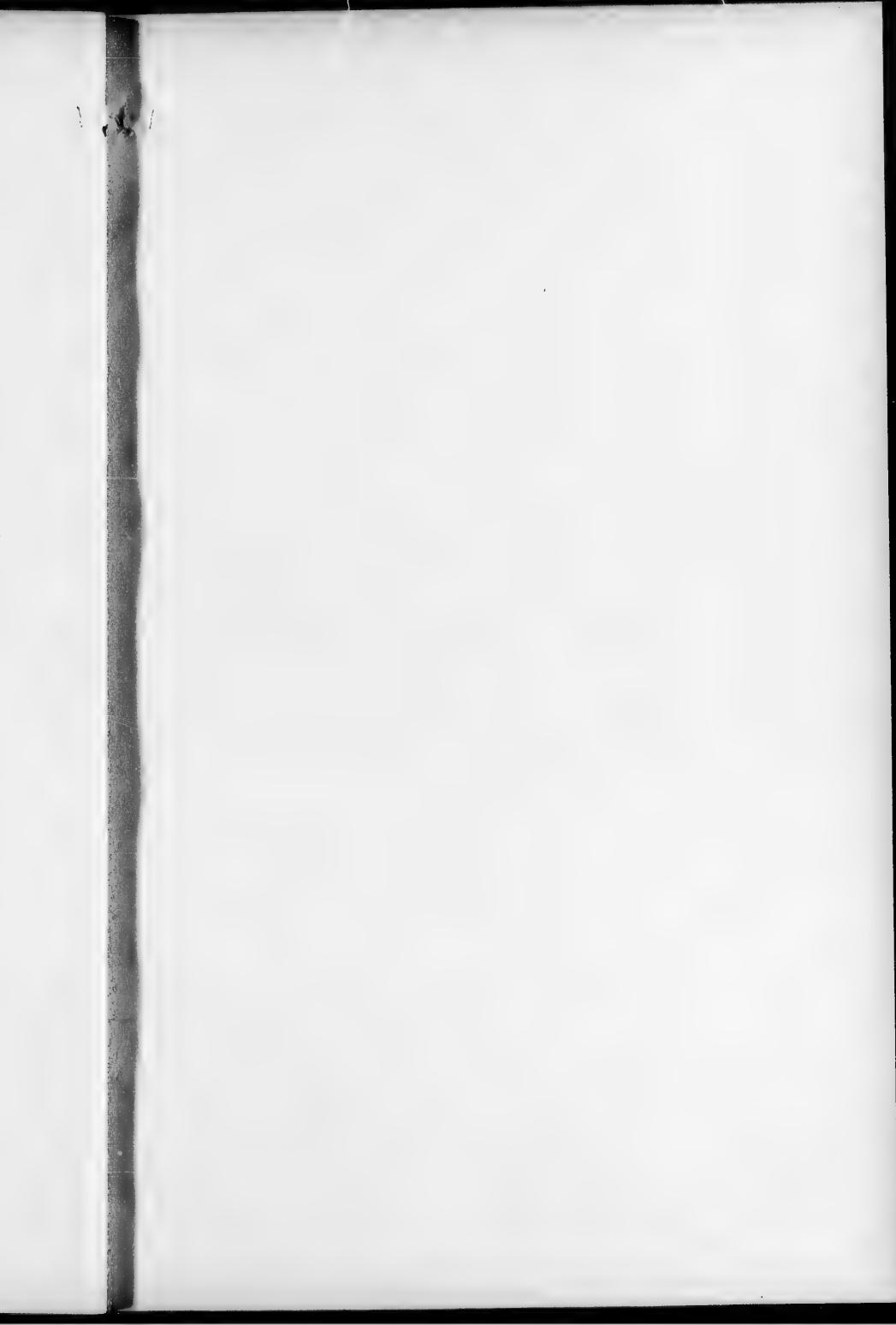
The Co. of Asia
being ~~now~~ ⁱⁿ the Am. & Asia

as has been
already shown by
his facts stated
before of various
missions he at times
navigating and trading
Bancroft, Alaska,
p. 98.

Curing ref
over page

See p. 285 subject at bottom
in here





was upon their results that Russia chiefly based her subsequent pretensions to the ownership of the north-western part of North America.

Hunters and traders followed this lead, and Behring Island, and others of the Aleutian chain, were visited from the Kamchatkan coast.

In 1768 a Lieutenant of the Russian navy made an expedition along the coast to Behring Strait, but with unsatisfactory geographical results.

Of the period from 1769 to 1779, Bancroft writes:—

"From this time to the visit of Captain Cook, single traders and small Companies continued to traffic with the islands in much the same manner as before, though a general tendency to consolidation was perceptible."

In 1774 Perez was dispatched by Spain. He extended his voyage to the southern part of Alaska.

In 1775, Hecata, from Spain, explored the coast of America as far north as the 57° or 58° of latitude, taking possession of that part of the continent in the name of Spain.

In 1778 Captain Cook, sent by the English Government, reached the American coast of the North Pacific with two vessels.

In pursuance of his instructions, he explored the coast from 44° of north latitude as far as the region of Prince William's Sound and Cook's River or Inlet, taking possession of the coasts there.

At Cook's Inlet he found traces of Russian traders but no Russians.

At Unalaska, one of the Aleutian Islands, he again heard of the Russians but did not meet with them.

Thence he sailed eastward to Bristol Bay, landing and taking possession.

From this he explored, and fixed the position of the American coast northward as far as Icy Cape, beyond Behring Strait.

Cook was killed in the following winter at the Sandwich Islands, but his ships under Clarke returned in 1799 and made further explorations in Behring Sea and the Arctic Ocean.

Under this expedition and for the first time the main outlines of the north-western part of the Continent of America, and particularly those of the eastern coast of Behring Sea, were correctly traced.

at 6th of page 14

The first instance
of any general nation
in pursuit of America
was by U. Kase grand
y. T. M. Perez to
the R. A. Co. in the
year 1768 when he
first time he
came down to the
coast of America.

In the 1741
B. Perez
exped. wh.
2^d from the
coast of Amer.
Discovery of the
Amer. coast:
Russia followed in
the second stage of
B. movement
was to an
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name - it -
Russia as well
July 13

reference to Cook

Cook's surveys still remain in many cases the only authority.

This expedition also opened up the trade in furs from the north-western part of America with China by sea.

In 1779 an official expedition sailed from Spain under Arteaga and Quadra, who explored part of the coast northward from about latitude 55°, and westward to Mount St. Elias.

In 1786 the "Captain Cook" and "Experiment," two vessels from Bombay, visited and traded at Nootka and Prince William Sound.

An English vessel, "The Lark," Captain Peters, from Bengal via Malacca and Canton, after trading at Petropaulovski in Kamtschatka, sailed for Copper Island with the supposed purpose, as alleged, of obtaining a cargo of copper there.

She was wrecked on Behring Island.

Also in the same year Puttock, Dixon, and Meares arrived upon the American coast, traded and explored far to the northward.

Puttock and Dixon, who had sailed from London in 1785 in the "King George" and "Queen Charlotte" first visited Cook's Inlet, where they found a party of Russians encamped but with no fixed establishment.

Meares sailed from Bengal in the "Nootka" early in the year, and reached the Islands of Atka and Sulia of the Aleutian chain.

Meares coasted from Unalaska to Cook's Inlet and Prince William Sound.

In 1786 La Perouse began his voyage round the world under instructions of the French Government.

He first made land at Mt. Elias. Thence he sailed eastward and southward calling at places on the Alaskan coast.

At Atna Bay he obtained in trade 1,000 otter skins.

In this year the Russian Pribyloff discovered the islands in Behring Sea now known by his name.

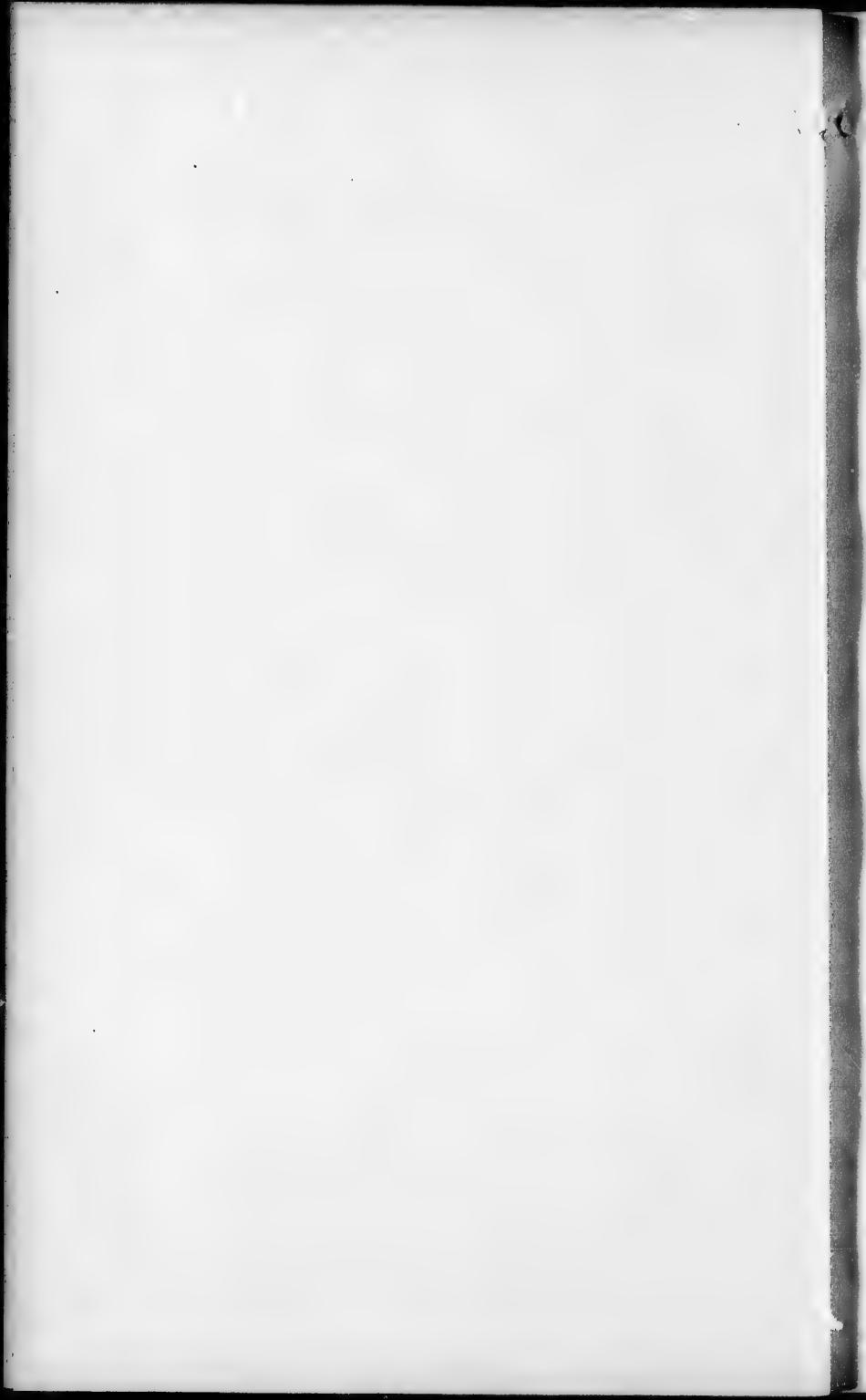
In 1788 a Spanish expedition, the "Princess" and San Carlos," under Martenez and Haro, set out.

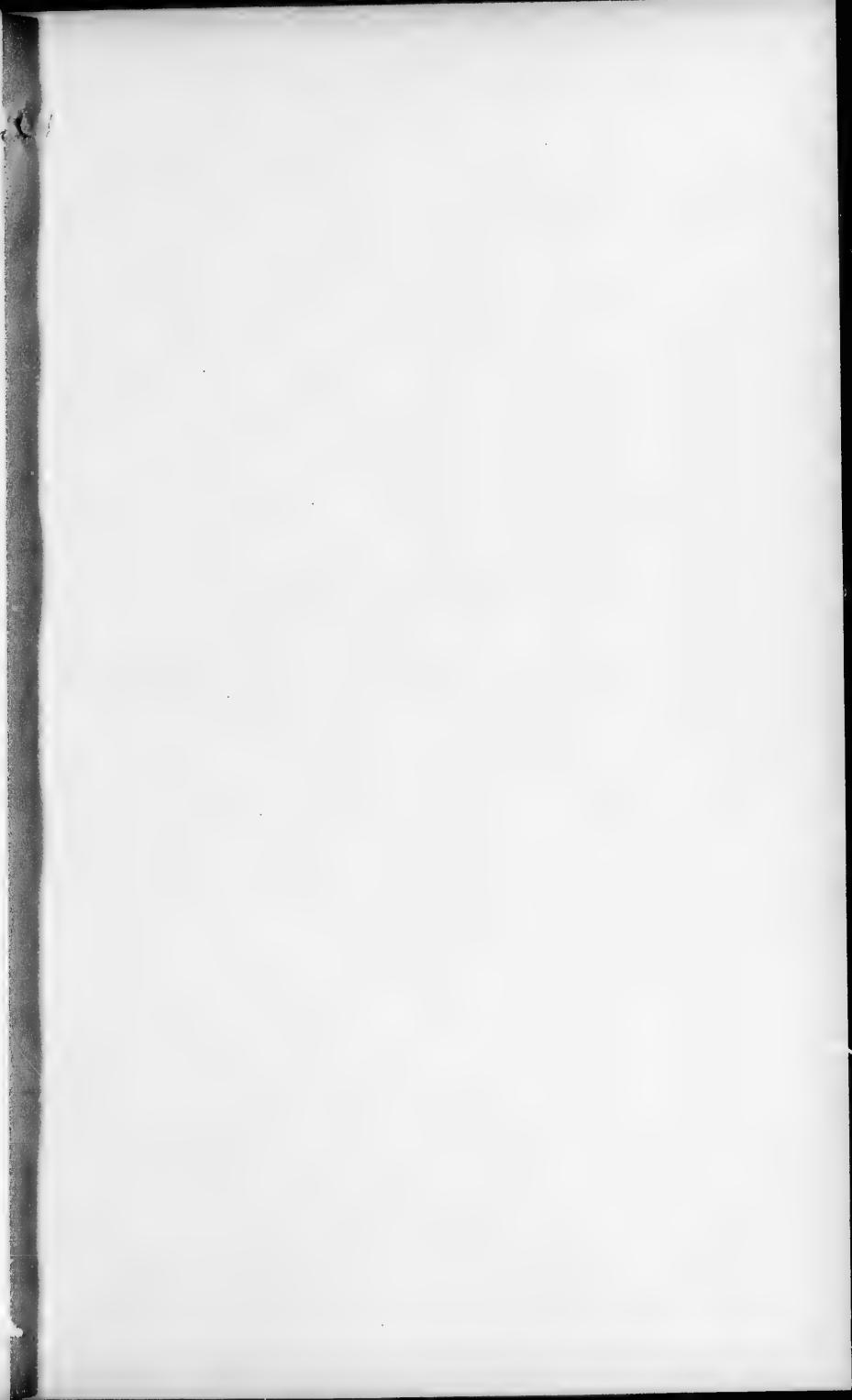
They visited Prince William Sound and found no Russians.

Haro, however, discovered a Russian colony at Three Saints, on Kodiak Island.

Sauer's account of
Billing's expedition,
London, 1802,
pp. 279, 281.

D. Sauer





This was the easternmost place which had at this time a permanent Russian Settlement.

The voyagers took possession of Unalaska for Spain, but afterwards discovered a Russian port.

Upon the conflict of interests at this time upon this part of the Alaskan coast and the rival claims to territory there, Bancroft makes the following remarks:—

"The events of 1787-88 must have been puzzling to the *Bancroft, Alaska, natives of Prince William Sound. Englishmen under the P. 217.* English flag, Englishmen under the Portuguese flag, Spaniards, and Russians were cruizing about, often within a few miles of each other, taking possession for one nation or the other of all the land in sight."

Referring to a Russian scientific exploring expedition in 1787, along the Asiatic Coast north from Okhotsk, Bancroft says:—

"The geographical results may be set down as next to *Ibid., p. 297.* nothing, with the exception of the thorough surveys of Captain's Bay in Ilinilik Harbour on Unalaska Island. Every other part of the work had already been done by Cook."

The complaints of her natives against the practices of single traders and adventurers brought back by this expedition was the beginning of the future grant of a monopoly of the trade in the hands of the Russian Company.

In 1788 vessels from the United States traded on the north-west coast. *History of the North-west Coast, p. 185.*

In 1789 twelve vessels at least are known to *Ibid., pp. 204-212.* have been trading on this coast.

The well-known "Nootka" seizures by the Spanish occurred in this year.

Hundreds of vessels, nearly all American, annually visited the North Pacific coasts of America for trade and settlement after 1789, ~~and~~ Robert Greenhow, Librarian of United States' Congress, Hart's Magazine, February 1842. ~~not one was captured or detained.~~

In 1787 vessels sailed for this coast from Boston, in the United States; they were followed by others, and a competition in the fur trade between them and vessels of other nations (mostly English) sprang up.

In 1801 there were sixteen ships on the north-west coast, fifteen American and one English.

These vessels exchanged with the natives of the coast for furs parts of their cargoes, and, proceeding to Canton, returned to their respective countries with cargoes of teas.

North American
Review, 1822,
Article XVIII.

Upwards of 18,000 sea-otter skins, besides other furs, were in 1801 collected by the Americans alone for the China market.

Bancroft is an authority for the statement that in 1799 there was no Russian Settlement outside of the islands.

Bancroft, Alaska,
p. 273.

In 1790 Fidulgo sailed from Nootka, then occupied by Spain, to examine the north-west coast. He called at Kodiak.

Ibid., p. 325.

The trading-vessel "Phœnix," Captain Morse, from the East Indies, was in Prince William Sound in this year.

Alaska, p. 285.

At this time Russia and Sweden being at war, a Swedish cruiser visited the Aleutian Islands, but finding no Government establishment to attack, and no one but traders living "in abject misery," her Commander refrained from attack.

Ibid., p. 274.

In 1791 Malaspicca, from Spain, under orders of the Government, visited several places in what is now the Alaskan coast.

Ibid., p. 275.

Douglas, in the "Iphigenia," also visited Cook Inlet this year.

Besides these three vessels, at least eight trading-vessels are known to have been on the coast, of which seven were American.

Alaska, p. 244.

In 1792 Cramano, setting out from Nootka, explored Port Bucarelli, in South-eastern Alaska, and it is reported that in this year fully twenty-eight vessels were upon the coast, at least half of them being engaged in the fur trade.

Vancouver, iii,
p. 498.

Vancouver gives a list of 21 vessels for the same year, divided as follows: From England, 6; from East Indies, 2; from China, 3; from United States, 7; from Portugal, 2; from France, 1.

Alaska, p. 296.

"Haleyon," Captain Barclay, visited Petropolovsky for purposes of trade, and a French vessel, "La Flavia," wintered there.

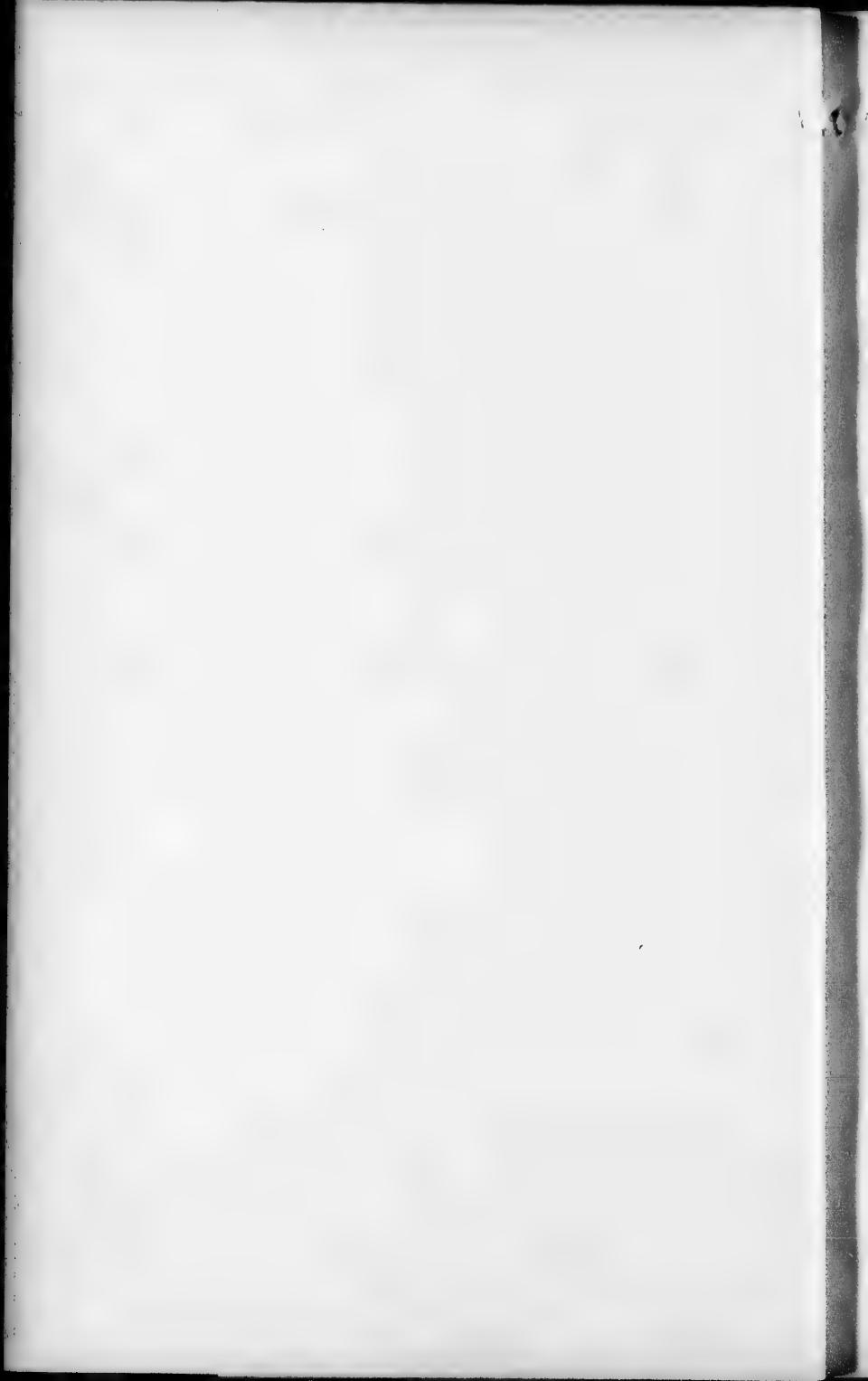
In 1793 Vancouver, who had been dispatched by the English Government with the "Discovery" and "Chatham" for the purpose of finally deciding the existence or otherwise of a communication between the Pacific and Atlantic by the exploration of all remaining inlets on the north-west coast, was occupied on what now constitutes the south-eastern Alaskan coast.

In 1794 he surveyed Cook's Inlet to its head.

Prince William Sound, Kodiak, and the coast extending to Yakutat Bay, were in turn carefully laid down.

Vancouver, iii,
p. 199.

Touching the Russians here and there discovered, Vancouver "clearly understood that the





Russian Government had little to do with these Settlements; that they were solely under the direction and support of independent mercantile Companies. . . . Not the least attention whatever is paid to the cultivation of the land or to any other object but that of collecting furs, which is principally done by the Indians."

Near Yakutat Bay he fell in with the "Jackal," an English trading-vessel, which was then upon the coast for the third consecutive season, and further to the south-eastward he met with the "Arthur," Captain Barker, from Bengal.

The names of four trading-vessels on the North-west Coast, north-west coast, including the "Jackal," were p. 291. found for this year.

In 1795 a trader, named the "Phœnix," from Ibid., p. 304. Bengal, was on the north-west coast.

In 1796 at least three trading-vessels are known Ibid., p. 305. to have been on the north-west coast.

In 1797 the names of four trading-vessels on Ibid., p. 306. this coast are known, but were probably a small part of the fleet.

In 1798 the names of six traders are known. Ibid.

In 1799 the "Caroline," Captain Cleveland, from Boston, arrived at Sitka.

Several other American vessels, among them Bancroft, Alaska, the brig "Eliza," under Captain Rowan, visited p. 309. the bay during the summer and absorbed the trade while Russians were preparing to occupy the field in the future.

The names of seven vessels trading on the North-west Coast, north-west coast are recorded in this year. p. 307.

In 1800 the ship "Enterprise," from New York, arrived at Kodiak.

The name of seven traders on the north-west Ibid., p. 308. coast are given in this year.

In 1802 the Russian Establishment at Sitka was destroyed, and nearly all the Russians there were massacred by the natives.

According to Sisiansky, the natives were assisted by three deserters from an United States' vessel, the "Jenny," which had called at Sitka not long before.

Shortly afterwards, the English vessel, the Alaska, pp. 404- "Unicorn," Captain Barber, arrived at Sitka, 409. and two other vessels, reported by the Russian survivors as English, but one of these Bancroft believes to have been the United States' vessel the "Alert."

In this year the news of the Charter granted Ibid., p. 416. to the Russian-American Company reached Baranoff, the Governor of Sitka.

1799¹

*Native
commercial
was forced to
consider the
V. of Seattle
area as
L. (S. P.)
but,* *sp.*

In this year also Krusanstern, having visited China, presented a Memorial to the Russian Government calling attention to the advantages offered by the trade in furs from America direct to Chinese ports, and suggesting Russia should engage in it.

The United States' vessel "O'Cain," Captain O'Cain, in 1803 exchanged goods for furs with Baranoff.

In 1804 Sitka was reoccupied and rebuilt on a new site.

*North-west Coast,
pp. 318, 319.*

Alaska, p. 443.

The names of four vessels trading on the north-west coast can be found in this year.

In 1805 two United States' vessels, one named "Juno," were at Sitka (then called New Archangel).

The names of six vessels, including "Juno," are known as trading on north-west coast in this year.

Nothing approaching to a complete record of the names or nationalities of vessels trading upon this part of the coast in the years about the close of the last century can now be obtained, and, in the absence of explorations, of which the results were published, from the time of Vancouver's departure, even incidental allusions to the presence of such traders are scarce.

That such trade was, however, continuously practised is evident from the general complaints made by the Russians as to its effect on their operations, and perhaps the best mode of making this clear is to quote from Bancroft's "History" a few allusions to such complaints referring particularly to these years.

Writing of ~~Bear~~ enterprises, Bancroft says :—

"At every point eastward of Kodiak where he had endeavoured to open trade, he found himself forestalled by English and American ships, which had raised the price of furs almost beyond his limited means."

Again, referring specially to the nascent Establishment at Sitka, Baranoff himself writes :—

"I thought there would be no danger with proper protection from the larger vessels, though the natives there possess large quantities of fire-arms and all kinds of ammunition, receiving new supplies annually from the English and from the Republicans of Boston and America, whose object is not permanent settlement on these shores, but who have been in the habit of making trading trips to these regions."

Ibid., p. 384.

*From the ^{MS. B. 1. 16}
1799? ^{or 1800?}
color? verity.*

*Perio
Sect.*





On another page Bancroft writes:—

"Baranoff's complaints of foreign encroachments appear Alaska, p. 398. to have been well grounded. Within a few leagues of Sitka the captains of three Boston ships secured 2,000 skins, though paying very high prices, each one trying to outbid the other."

Further on Baranoff is quoted to the effect *Ibid.*, p. 399. that the Americans had been acquainted with the tribes in this region for two or three years, and sent there annually from six to eight vessels.

These vessels from the United States were just beginning to supplant the English traders, who had in earlier years been the more numerous.

Still again Bancroft quotes Baranoff as follows:—

"The resources of this region are such that millions *Ibid.* may be made there for our country with proper management in the future, but for over ten years from six to ten English and American vessels have called here every year. It is safe to calculate an average of 2,000 skins on eight or, say, six vessels, which would make 12,000 a-year, and, if we even take 10,000 as a minimum, it would amount in ten years to 100,000 skins, which, at the price at Canton of 45 roubles per skin, would amount to 4,500,000 roubles."

In 1803 Baranoff contemplated the abandonment *Ibid.*, p. 417. of Ounalaska, owing to disease and non-arrival of supplies. He ordered that operations should be moved to the Pribyloff Islands to collect there the furs accumulated by the natives. These islands had not been visited for many years.

Captain O'Cain, of the United States' vessel "O'Cain," took Aleutian hunters to Californian coast to hunt fur-seals and sea-otters.

"Thus was inaugurated a series of hunting *Ibid.*, pp. 477, 478. expeditions beyond the borders of the Russian Colonies, which continued for many years."

In October 1804 Sitka (then called New Archangel) was reoccupied and rebuilt on a new site. A Treaty was made with the Indians, and the "Neva" sailed with a valuable cargo of furs for China.

In this year the "Juno," an American vessel, North-west Coast, together with six others, was trading on the p. 443. north-west coast.

In 1806 the Russian Ambassador Rosenoff visited the Pribyloff Islands on the "Maria," and endeavoured to stop the wasteful slaughter of fur-seals.

He recommended the Emperor to "take a Alaska, p. 446.

In Alaska a ship from
Alaska, p. 451.

Ibid., p. 454.

Ibid., pp. 478, 479.

Ibid., p. 461.

Alaska, pp. 470,
480.

Ibid., p. 467.

Ibid., p. 470.

Alaska, p. 480.

North-west Coast,
p. 829.

Alaska, p. 807.

firmer hold of the country," as the Bostonians were undermining the trade with China.

He reported that the Bostonians had armed the Kolochs.

In 1806 the "Juno," with her cargo, was purchased by Baranoff.

The "Eclipse" (Captain O'Cain) sailed for China with furs; but was lost on the way back. The venture was a failure.

Resenoff, in 1807, sent the "Juno" to the Californian coast for provisions.

The "Myrtle," an English ship (Captain Barber), was purchased by Baranoff.

In 1808 the United States' vessel "Mercury" was fur-trading and hunting.

Four United States' traders were on this coast in 1808 and 1809.

A conspiracy formed in 1809 by Russian employees at Sitka to kill Baranoff was frustrated.

In 1810 the Russian sloop-of-war "Diana" visited Sitka. There were several United States' vessels in the port at the time.

Shortly after the United States' "Enterprise" and "O'Cain" arrived. The "Enterprise" went to Canton with furs.

Golovin, Commander of "Diana," writes that "an American sailor and a Russian skipper composed the Diplomatic Corps of the Russian-American Company."

In 1810 and 1811 four vessels were engaged in the sea-otter fishery, under Russian contracts.

In 1811 the "Enterprise" returned from and went back to China with furs.

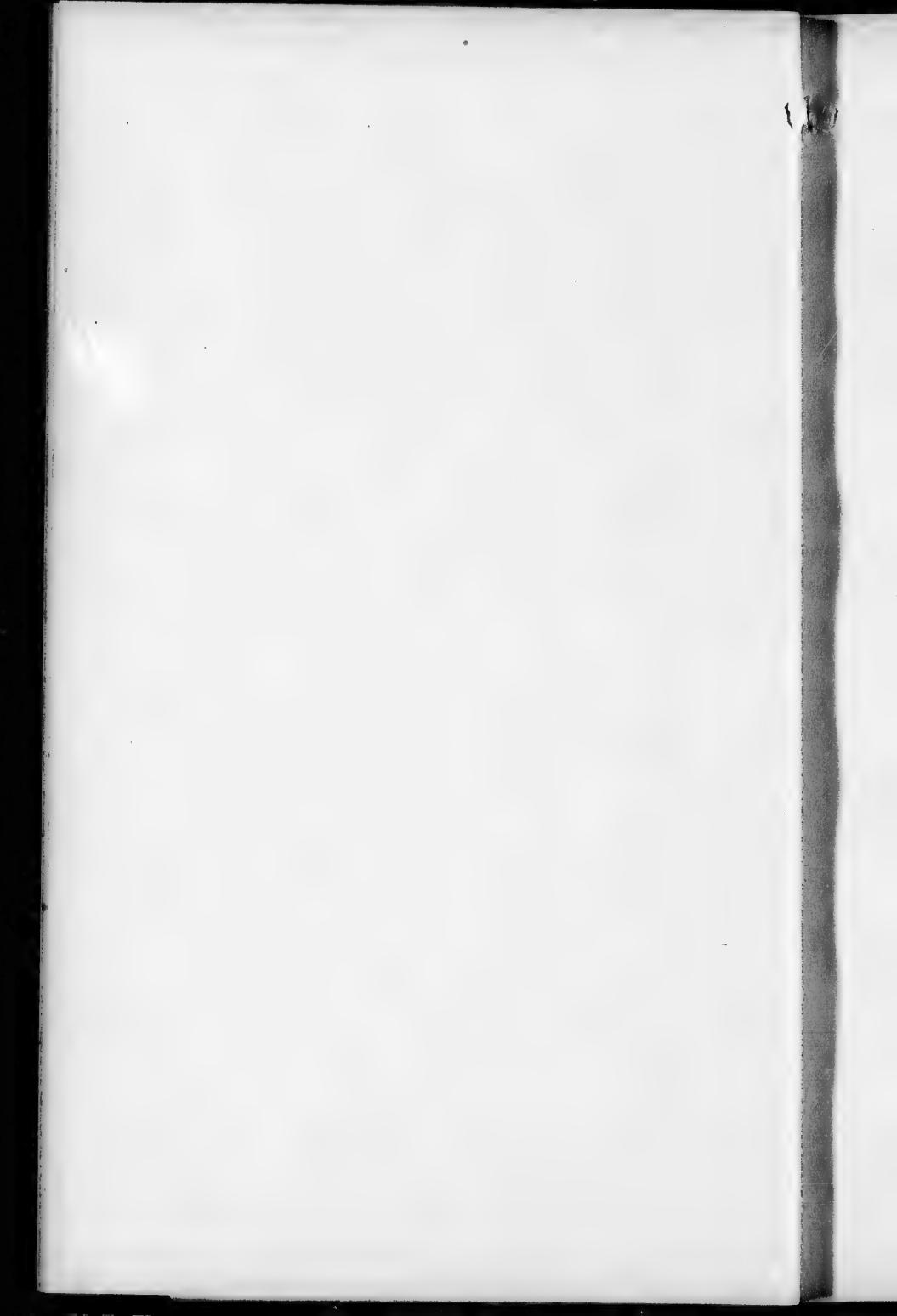
The Ross Colony was founded in California to provide agricultural products for use on the north-west coast. Five traders and others engaged in fishing were seen on the coast of Southern Alaska in this year.

In 1812 the United States' ship "Beaver" disposed of her cargo to Baranoff at Sitka, and was then sent to the Pribyloff Islands for fur-seal skins as payment.

Between 1809 and 1812 Baranoff made six additional contracts with United States' vessels. He received proportion of skins, which were chiefly sea-otters.

Between 1812 and 1814 there was a ~~war~~ trade, owing to the war between England and United States.

In 1814 Captain Bennett (United States) sold two vessels, with cargoes to Baranoff, and took





fur-seal skins from Pribyloff Islands in payment. He was afterwards wrecked on the Sandwich Islands.

This year Lozaref, sent by Russia, with two ships, reached Sitka, but quarrelled with Baranoff and returned.

In 1815 the "Isabel" reached Sitka with Dr. Shaffer on board.

In 1806 the "Rurie" (Captain Kotzebue) reached Petropaulovsky and then touched at Sandwich Islands, and explored Kotzebue Strait, west of Behring Strait.

Two United States' vessels visited the Russian Settlements this year.

In 1817 Kotzebue, on an exploring expedition, only reached St. Lawrence Island.

An expedition in two vessels under Hage-meister, sent by Russia, reached Sitka this year.

In 1818 Hagemeister superseded Baranoff, under instructions.

~~The same year the Russian sloop "Kamschatka" arrived at Sitka under Golovinin.~~

Roquefeuil, a French officer, arrived at Sitka in the "Burdalais," a trading-vessel.

Sailed for Prince of Wales Archipelago, but disagreed with natives and returned to Sitka.

Russians also made attempts at exploration at this time without great success.

This year Roquefeuil found an United States' trading-vessel in Alaskan waters.

In 1819 the United States' traders obtained most of the trade, bartering with the Koloch fire-arms and rum for skins. They obtained about 8,000 skins a-year. The Russians could not compete with them.

The Russian twenty-year Charter was about to expire, and Golovinin was instructed to inquire as to its operations. His Report was not favourable.

He writes:—

"Three things are wanting in the organization of the Company's colonies: a clearer definition of the various officers, a distinction of rank, and a regular uniform, so that foreigners visiting these ports may see something indicating the existence of ports and troops belonging to the Russian sceptre—something resembling a regular garrison. At present they can come to no other conclusion than that these stations are but temporary fortifications erected by hunters as a defence against savages."

In 1820 four trading-vessels were operating on the north-west coast.

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Russian

Russia
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North-west Coast,
p. 522.

The extent of Russian occupation at about the date of the expiry of the first Charter can be shown by the Census taken in 1819 :—

		Men.	Women.
Sitka, or New Archangel	..	198	11
Kodiak and adjoining islands	..	73	..
Island of Vokamok	..	2	..
Katmai	..	4	..
Suth Kumokoi	..	3	..
Voskresensky Harbour	..	2	..
Fort Constantine	..	17	..
Nikolai, Cook Inlet	..	11	..
Alexandrovsk, Cook Inlet	..	11	..
Ross Settlement, California	..	27	..
Pribiloff Islands	..	27	..
Nushagak (the only Settlement on the continent north of the Aleutian Islands)	..	3	2
Total	..	378	13

July 24th 1818 N.H.
Russian territorial claim in 1821.

Russia had no title to any portion of the North American Continent.

American State Papers, Foreign Relations, vol. v p. 436.

From 1799 until 1821 there is no pretence, either by acts of the Company or on the part of the Russian Government, of exclusive rights as against the world outside of the ordinary territorial limit.

Mr. Adams, Secretary of the United States, established clearly that even as late as 1823 Russian rights in the region under consideration "were confined to certain *islands* north of the 55th degree of latitude," and had "no existence in the continent of America."

Writing (22nd July, 1823) to Mr. Middleton, Mr. Adams observed :—

"It does not appear that there ever has been a permanent Russian Settlement on this continent south of latitude 59°, that of New Archangel, cited by M. Poltica, in latitude 57° 30', being upon an island. So far as *prior discovery* can constitute a foundation of right, the papers which I have referred to prove that it belongs to the United States as far as 59° north, by the transfer to them of the rights of Spain. There is, however, no part of the globe where the mere fact of discovery could be held to give weaker claims than on the north-west coast. The great sinuosity, says Humboldt, formed by the coast between the 55th and 60th parallels of latitude, embraces discoveries made by Gali, Bering, and Tchivikoff, Quadra, Cook, La Perouse, Malaspier, and Vancouver. No European nation has yet formed an establishment upon the immense extent of coast from Cape Mendosiro to the 59th degree of latitude. Beyond that limit the Russian factories commence, most of which are scattered and distant from each other like the factories established by the European nations for the last three centuries on the coast of Africa. Most of these little Russian Colonies communicate with each other only by sea, and the new





dominations of Russian-America or Russian possessions in the new continent must not lead us to believe that the coast of Bering Bay, the Peninsula of Alaska, or the country of the Ischugatschi have become Russian *provinces* in the same sense given to the word when speaking of the Spanish Provinces of Senora or New Biscay." (Humboldt's "New Spain," vol. ii, Book 3, chap. 8, p. 496.)

"In M. Poletica's letter of the 28th February, 1822, to me, he says that when the Emperor Paul I granted to the present American Company its first Charter in 1799, he gave it the *exclusive possession* of the north-west coast of America, which belonged to Russia, from the 55th degree of north latitude to Bering Strait.

"In his letter of the 2nd April, 1822, he says that the Charter to the Russian-American Company in 1799 was merely conceding to them a part of the sovereignty, or rather certain exclusive privileges of commerce.

"This is the most correct view of the subject. The Emperor Paul granted to the Russian-American Company certain exclusive privileges of commerce—exclusive with reference to other Russian subjects; but Russia had never before asserted a right of sovereignty over any part of the American continent; and in 1799 the people of the United States had been at least for twelve years in the constant and uninterrupted enjoyment of a profitable trade with the natives of that very coast, of which the Ukase of the Emperor Paul could not deprive them."

Touching the question of Russia's claims, up to 1821, to exclusive jurisdiction over more than certain islands in the Pacific Ocean on the American coast, Mr. Adams, moreover, brought forward, with approval, articles which appeared in "The North American Review," published in the United States, and in the "Quarterly Review," published in England.

From the facts disclosed by these articles it appears that the Government of the United States took the ground explained by Mr. Adams, that "the right of discovery, of occupancy, of uncontested possession," alleged by Russia, were "all without foundation in fact," as late as the year 1823.

While the subjects of Russia, Spain, Great Britain, and the United States were doubtless making claims on the part of their respective Rulers from time to time, so uncertain were their claims and the merits of each that in 1818 (20th October), in the Convention between the United States and Great Britain, it was agreed that any "country that may be claimed by either party on the north-west coast of America, westward of the Stony Mountains, shall, together with its harbours, bays, and creeks, and the

Appendix I.
Article XVIII,
North American
Review, vol. xv,
Quarterly Review,
1821-22, vol. xxvi.

See also Adams to
Rush, July 22,
1823, p. 446;
American State
Papers, Foreign
Relations, F. O.,
p. 446;
and also Confi-
dential Memorial
inclosed in letter,
Middleton to
Adams, December
1 (18), 1823,
p. 449, American
State Papers,
Foreign Relations,
F. O.

Extent of I.

Seal Fisher

The Ukas

23

navigation of all rivers within the same, be free and open for the term of ten years from the date of the signature of the Convention, to the vessels, citizens, and subjects of the two Powers, it being well understood that this agreement is not to be construed to the prejudice of any claims which either of the two High Contracting Parties may have to any part of the said country, nor shall it be taken to affect the claims of any other Power or State to any part of the said country, the only object of the High Contracting Parties in that respect being to prevent disputes and differences between themselves."

Extent of Russian occupation in 1821.

"Tikhmenief,"
vol. i, pp. 252-253.
Appendix, Bancroft's "Alaska,"
note to p. 522.

Seal Fisheries of minor importance in 1821.

Sumner's speech,
p. 178, H. R., Ex.
Doc., Nos. 157-180,
2nd Sess., 40th
Cong., *infra*. See
Appendix.

The Ukase of Paul purely domestic.

Dealing with

Am. State Papers, Foreign Relations, vol. v,
p. 461.

"The confusion prevailing in Europe in 1799 permitted Russia (who alone seems to have kept her attention fixed upon this interest during that period) to take a decided step towards the monopoly of this trade, by the Ukase of that date, which trespassed upon the acknowledged rights of Spain; but at that moment the Emperor Paul had declared war against that country as being an ally of France. This Ukase, which is, in its form, an act purely domestic, was never notified to any foreign State with injunction to respect its provisions. Accordingly, it ap-

• The only Settlement on the continent north of the Aleutian Islands.

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pears to have been passed over unobserved by foreign Powers, and it remained without execution in so far as it militated against their rights."

From 1799 to 1821, therefore, there is no evidence upon which it can be said that Russia either asserted or exercised exclusive jurisdiction in Behring Sea outside of the ordinary territorial limits.

CHAPTER II.

POINTS I AND II.—*The Ukase; the Negotiations or Treaties between 1821 and 1825.*

Voyage, M. de Krusenstern, vol. i, p. 14, No. 384, p. 454. American State Papers, Foreign Relations, vol. v.

American State Papers, vol. v, pp. 438-443. Bancroft, p. 528. "Tikhmenief," Ister. Obos, I, cited in note to Bancroft, p. 532.

See also Bancroft, vol. xxxiii, p. 446; Oresanoff's complaint in 1805.

Bancroft, 531, cap. xxvi (1886).

Ukase of Alexander, 1821.

by Michael

illegal traffic & secret
as against their actions

Shortly before the date of the renewal of the Charter of the Russian-American Company in 1821, the aspect of affairs had considerably changed.

The Company had long before fully succeeded in getting rid of their Russian rivals, but trading-vessels from England and from the United States haunted the coast and everywhere competed with the Company. Goods were brought by these vessels at prices which the Company could not successfully meet, and furs were taken by them direct to Chinese sea-ports, while the Company, as a rule, had still to depend on the overland route from Okhotsk to Riatcha on the Amoor.

Domestic competition had in fact ceased, and the most serious drawback to the success of the Company consisted in the competition from abroad.

The difficulties resulting to the Company on account of foreign competition appears in the complaints made by its agents at this time, and the new claim of the right to exclude foreigners from trade is embodied in the Ukase of 1821.

In 1821 Russia first asserted exclusive jurisdiction over a large portion of the Pacific Ocean, now known as Behring Sea.

When the term of the First Charter expired, the Russian-American Company numbered among its shareholders Russians of high rank, as well as members of the Royal Family, and the Emperor Alexander himself was a shareholder.

Accordingly, a Ukase was issued as follows:—

"Edict of His Imperial Majesty, Autocrat of All the Russias.

"The Directing Senate maketh known unto all men: Whereas, in an Edict of His Imperial Majesty, issued to the Directing Senate on the 4th day of September, 1821, and signed by His Imperial Majesty's own hand, it is thus expressed:—

"Observing from Reports submitted to us that the trade of our subjects on the Aleutian Islands and on the north-west coast of America pertaining unto Russia is subjected, because of illicit and secret traffic, to oppression and impediments, and finding that the principal cause of



these difficulties is the want of Rules establishing the boundaries for navigation along these coasts, and the order of naval communication, as well in these places as on the whole of the eastern coast of Siberia and the Kurile Islands, we have deemed it necessary to determine these communications by specific Regulations, which are hereto attached.

"In forwarding these Regulations to the Directing Senate, we command that the same be published for universal information, and that the proper measures be taken to carry them into execution.

(Countersigned) "COUNT DE GURIEF,
 "Minister of Finances.

"It is therefore decreed by the Directing Senate that His Imperial Majesty's Edict be published for the information of all men, and that the same be obeyed by all whom it may concern."

"The original is signed by the Directing Senate.

"On the original is written in the handwriting of His Imperial Majesty, thus:

"Be it accordingly,
"ALEXANDER.

"Section 1. The pursuits of commerce, whaling, and fishery, and of all other industry, on all islands, ports, and gulf, including the whole of the north-west coast of America, beginning from Bering Straits to the 51st of northern latitude; also from the Aleutian Islands to the eastern coast of Siberia, as well as along the Kurile Islands, from Bering Straits to the south cape of the Island of Urum, viz., to the 45° 50' northern latitude, is exclusively granted to Russian subjects.

"Sec. 2. It is therefore prohibited to all foreign vessels not only to land on the coasts and islands belonging to Russia, as stated above, but also to approach them within less than 100 Italian miles. The transgressor's vessel is subject to confiscation, along with the whole cargo."

The Russian-American Company then obtained
an extension of their Charter for another period
of twenty years.

For Charter, 1821,
see Appendix.

Upon receiving communication of the Ukase, the British and United States' Governments ~~presently~~ objected both to the extension of the territorial claim and to the assertion of maritime jurisdiction.

On the 30th January (or 11th February), United States' Protest against Ukase of 1821. 1822, M. Pierre de Poletica, the Envoy Extraordinary and Minister Plenipotentiary of the Russian Emperor, transmits the Edict to Mr. Adams, Secretary of State for the United States.

On the 25th February, 1822, Mr. Adams wrote to M. Poletica:—

"Department of State, Washington,

"Sir,

"February 25, 1822.

"I have the honour of receiving your note of the 11th instant, inclosing a printed copy of the Regulations adopted by the Russian-American Company, and sanctioned by His Imperial Majesty, relating to the commerce of foreigners in the waters bordering on the establishments of that Company upon the north-west coasts of America.

"I am directed by the President of the United States to inform you that he has seen with surprise in this Edict the assertion of a territorial claim on the part of Russia extending to the 51st degree of north latitude on this continent, and a Regulation interdicting to all commercial vessels other than Russian upon the penalty of seizure and confiscation the approach upon the high seas within 100 Italian miles of the shores to which that claim is made to apply. The relations of the United States with His Imperial Majesty have always been of the most friendly character, and it is the most earnest desire of this Government to preserve them in that state. It was expected, before any Act which would define the boundary between the territories of the United States and Russia on this continent, that the same would have been arranged by Treaty between the parties. To exclude the vessels of our citizens from the shore, beyond the ordinary distance to which the territorial jurisdiction extends, has excited still greater surprise.

"This Ordinance affects so deeply the right of the United States and of their citizens, that I am instructed to inquire whether you are authorized to give explanations of the grounds of right, upon principles generally recognized by the laws and usages of nations, which can warrant the claims and Regulations contained in it.

"I avail, &c.

(Signed) JOHN QUINCY ADAMS."

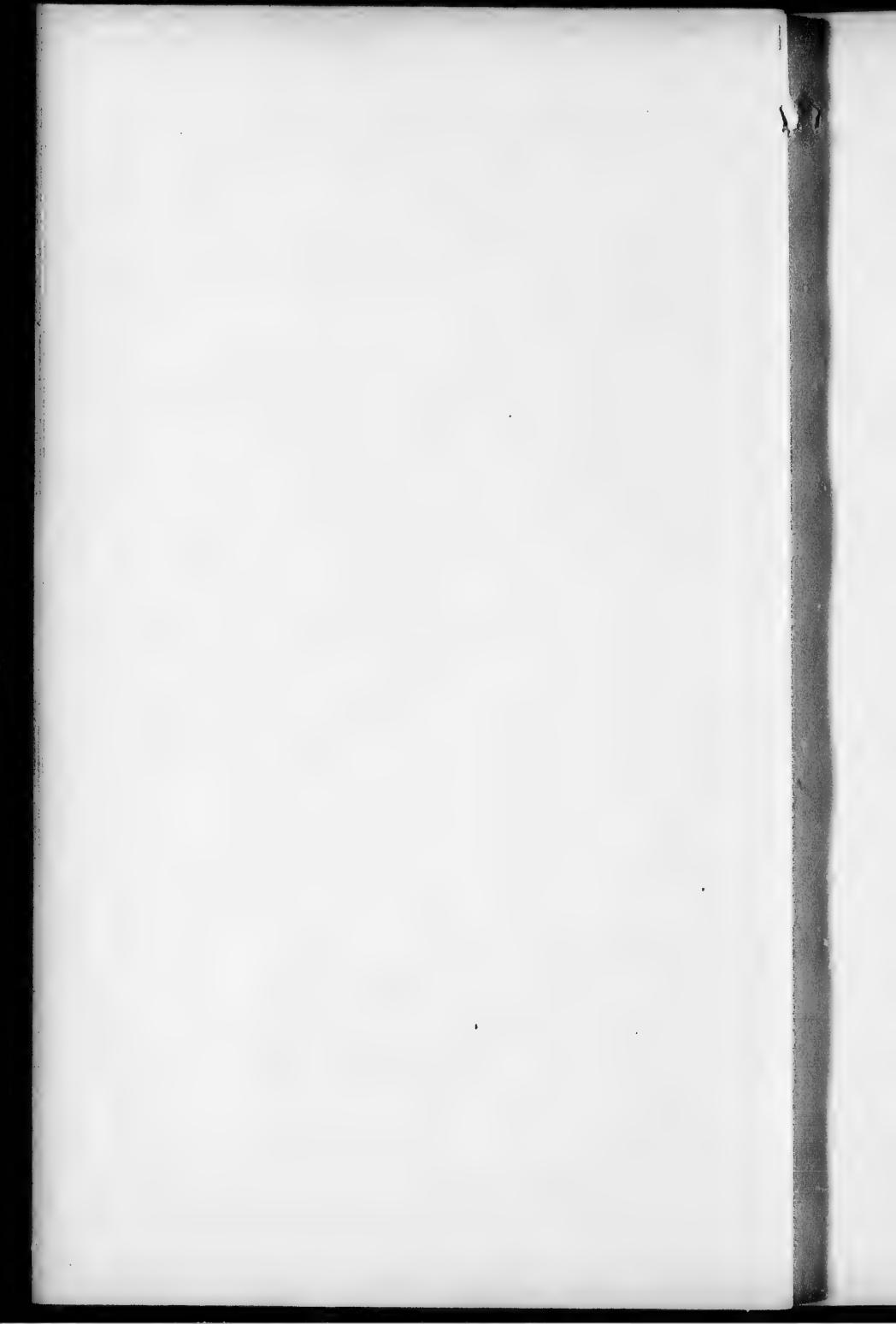
The protest contained in this despatch covers exactly the description in the Edict. Both the Edict and the protest apply to the waters from Behring Straits to 51° north latitude.

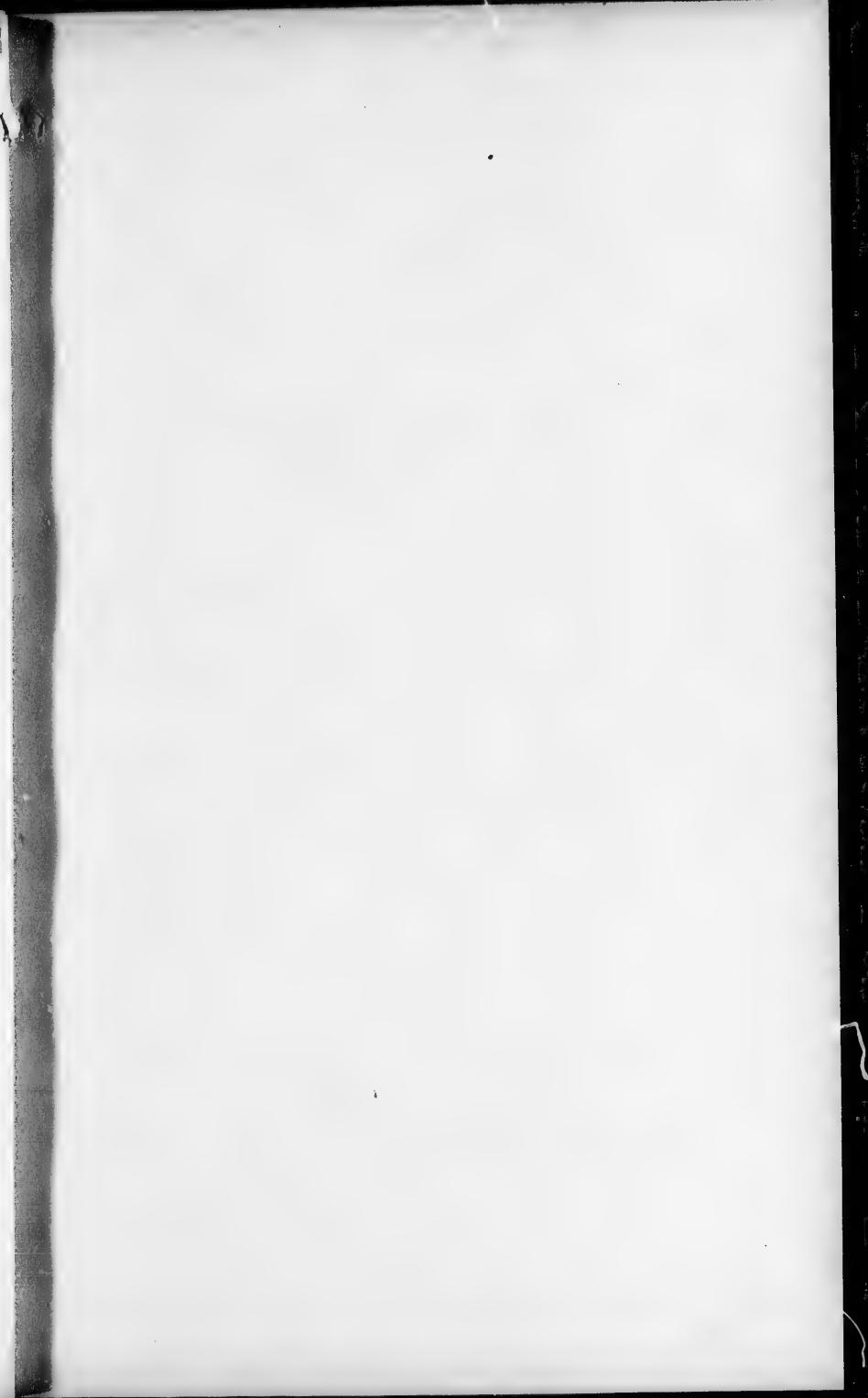
On the 28th of the same month the Russian Representative replied at length, defending the territorial claim on grounds of discovery, first occupation, and undisturbed possession, and explaining the motive "which determined the Imperial Government to prohibit foreign vessels from approaching the north-west coast of America belonging to Russia, within the distance of at least 100 Italian miles."

Further on he observed:—

*Ukase based on
doctrine of mare
clausum.*

"I ought, in the last place, to request you to consider, Sir, that the Russian possessions in the Pacific Ocean extend, on the north-west coast of America, from Behring Strait to the 51st degree of north latitude, and on the





opposite side of Asia and the islands adjacent from the same strait to the 45th degree; the extent of sea of which these possessions form the limits comprehends all the conditions which are ordinarily attached to shut seas ("mers fermées"), and the Russian Government might, consequently, judge itself authorized to exercise upon this sea the right of sovereignty, and especially that of entirely interdicting the entrance of foreigners. But it preferred only asserting its essential rights, without taking any advantage of localities."

To this Mr. Adams replied (30th March, 1822).
He said:—

"This pretension is to be considered not only with reference to the question of territorial right, but also to that prohibition to the vessels of other nations, including those of the United States, to approach within 100 Italian miles of the coasts. From the period of the existence of the United States as an independent nation their vessels have freely navigated those seas, and the right to navigate them is a part of that independence.

"With regard to the suggestion that the Russian Government might have justified the exercise of sovereignty over the Pacific Ocean as a close sea, because it claims territory both on its American and Asiatic shores, it may suffice to say that the distance from shore to shore on this sea, in latitude 51° north, is not less than 90° of longitude, or 4,000 miles."

The Russian Representative replied to this note on the 2nd April following, endeavouring to prove that the territorial rights of Russia on the north-west coast of America were not confined to the limits of the Concession granted to the Russian-American Company in 1799, and arguing that the great extent of the Pacific Ocean at the 51st degree of latitude did not invalidate the right which Russia might have to consider that part of the ocean as closed. But he added that further discussion of this point was unnecessary, as the Imperial Government had not thought fit to take advantage of that right.

On the 22nd July, 1823, Mr. Adams wrote to Mr. Middleton as follows:—

"From the tenour of the Ukase, the pretensions of the Imperial Government extend to an exclusive territorial jurisdiction from the 45th degree of north latitude, on the Asiatic coast, to the latitude of 51 north on the western coast of the American Continent; and they assume the right of interdicting the navigation and the fishery of all other nations to the extent of 100 miles from the whole of that coast.

"The United States can admit no part of these claims. Their right of navigation and of fishing is perfect, and has

For the letter of
March 30, 1822,
see Appendix.

Handwritten notes:
Lent/for No 2. N.Y. 1890
in 24/

been in constant exercise from the earliest times, after the Peace of 1783, throughout the whole extent of the Southern Ocean, subject only to the ordinary exceptions and exclusions of the territorial jurisdictions, which, so far as Russian rights are concerned, are confined to certain *islands* north of the 55th degree of latitude, and have no existence on the Continent of America.

"The correspondence between M. Poletica and this Department contained no discussion of the principles or of the facts upon which he attempted the justification of the Imperial Ukase. This was purposely avoided on our part, under the expectation that the Imperial Government could not fail, upon a review of the measure, to revoke it altogether. It did, however, excite much public animadversion in this country, as the Ukase itself had already done in England. I inclose herewith the "North American Review" for October 1822, No. 37, which contains an article (p. 370) written by a person fully master of the subject; and for the view of it taken in England I refer you to the 52nd number of the "Quarterly Review," the article upon Lieutenant Kotzebue's voyages. From the article in the "North American Review" it will be seen that the rights of discovery, of occupancy, and of uncontested possession, alleged by M. Poletica, are all without foundation in fact."

* * * * *

For brief in full,
see Appendix.

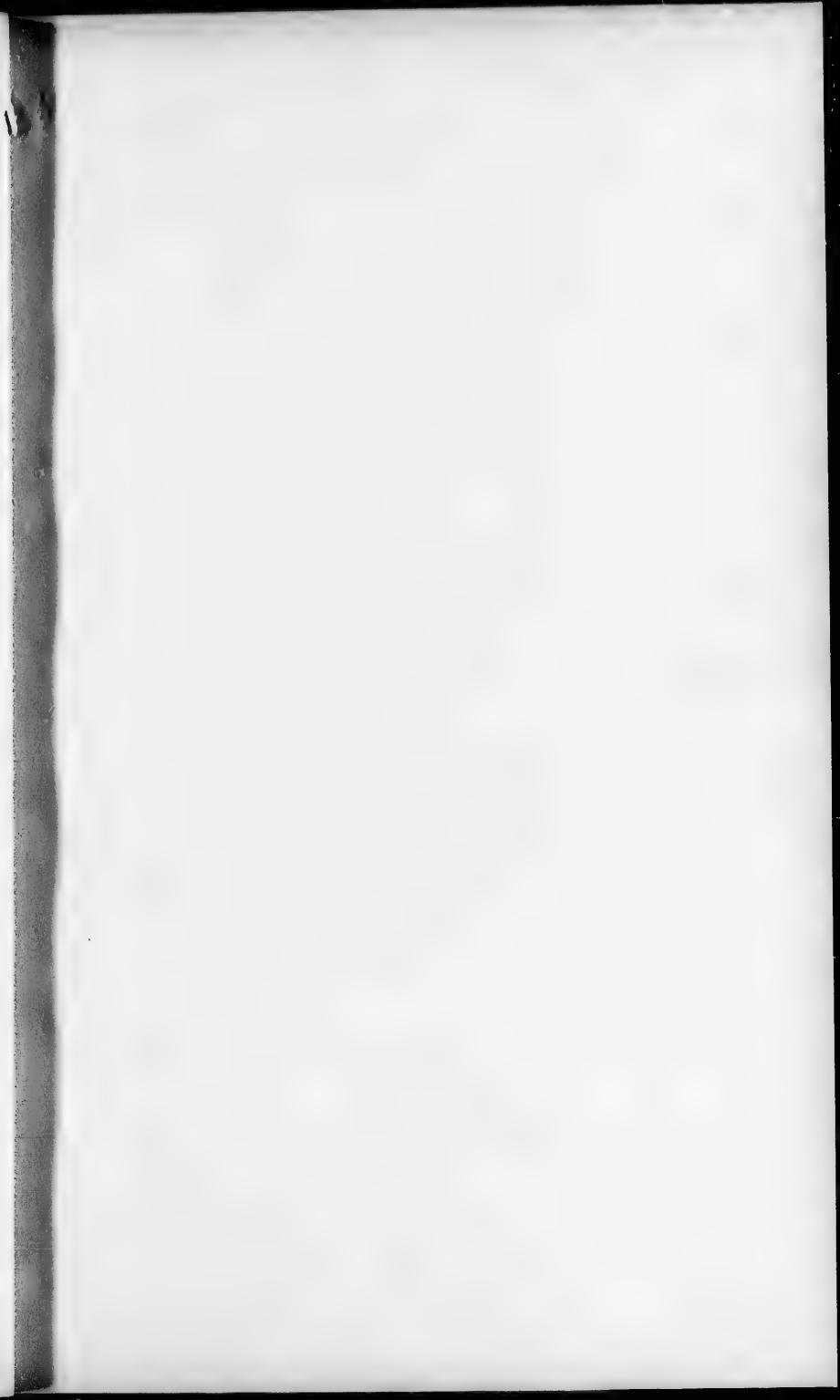
Mr. Middleton, the United States' Minister at St. Petersburg, writing to the Secretary of State for the United States, on the 1st December, 1823, inclosed a brief which thus dealt with the claim (which is properly regarded by him as an attempt to extend territorial jurisdiction upon the theory of a shut sea and having no other basis):—

American State
Papers, Foreign
Relations, vol. v,
p. 452.

"The extension of territorial rights to the distance of 100 miles from the coasts upon two opposite continents, and the prohibition of approaching to the same distance from these coasts, or those of all the intervening islands, are innovations in the law of nations, and measures unexampled. It must thus be imagined that this prohibition, bearing the pains of confiscation, applies to a long line of coasts, with the intermediate islands, situated in vast seas, where the navigation is subject to innumerable and unknown difficulties, and where the chief employment, which is the whale fishery, cannot be compatible with a regulated and well-determined course.

"The right cannot be denied of shutting a port, a sea, or even an entire country, against foreign commerce in some particular cases. But the exercise of such a right, unless in the case of a colonial system already established, or for some other special object, would be exposed to an unfavourable interpretation, as being contrary to the liberal spirit of modern times, wherein we look for the





bonds of amity and of reciprocal commerce among all nations being more closely cemented.

"Universal usage, which has obtained the force of law, has established for all the coasts an accessory limit of a moderate distance, which is sufficient for the security of the country, and for the convenience of its inhabitants, but which lays no restraint upon the universal rights of nations, nor upon the freedom of commerce and of navigation." (Vattel, B.I., Chapter 23, section 289.)

During the negotiation both with the United Ukase, 1821, abandoned, States and with Great Britain the execution of the Ukase was suspended. Mr. Middleton (19th September, 1823), writing to Mr. Adams, said :—

"Upon Sir Charles (Bagot) expressing his wish to be informed respecting the actual state of the north-west question between the United States and Russia so far as it might be known to me, I saw no objection to making a confidential communication to him of the note of Count Nesselrode, dated the 1st August, 1822, by which, in fact, staying the execution of the Ukase above mentioned, Russia has virtually abandoned the pretension therein advanced."

*See as to suspension
of Ukase and
restriction to one
marine league;
Count Nesselrode
to Count Lieven,
June 26, 1823.*

The following extract from a despatch from Count Nesselrode to Count Lieven, dated the 26th June, 1823, shows how complete the suspension was :—

"That the Commanders of our ships of war must confine their surveillance as nearly as possible to the mainland, i.e., over an extent of sea within range of cannon-shot from the shore; that they must not extend that surveillance beyond the sphere where the American Company has effectually exercised its rights of hunting and fishing since the date of its creation, as well as since the renewal of its privileges in 1799, and that as to the islands on which are to be found colonies or settlements of the Company, they are all indistinctively comprised in this general rule.

" . . . Your Excellency will observe that these new instructions—which, as a matter of fact, are to suspend provisionally the effect of the Imperial Ukase of the 4th September, 1821—were sent from St. Petersburg only in August of last year."

There was therefore no exercise of extraordinary exclusive jurisdiction on the part of Russia, for the pretensions set up in the Ukase of 1821 were promptly suspended.

Writing to Mr. S. Canning in 1824 (8th December), the Right Honourable G. Canning remarks :—

"That this Ukase is not acted upon, and that instructions have long ago been sent by the Russian Government to their cruisers in the Pacific to suspend the execution of its provisions is true."

*As to suspension
of Ukase, see Lyall
to Canning,
Canningham to
Lyall, November
1823, Appendix.*

H. R., Ex. Doc.,
p. 177; and
Howard's Report,
p. 213.

The absence in the correspondence of any reference to whaling and fishing, though these words occur in the Regulations, was due to the fact that neither whaling nor fishing was carried on in these waters at this time.

Apparently up to 1807 seals were killed and taken on the rookeries only, the "rocks and recesses," as Mr. Sumner terms them.

The Russian Government also probably desired to cover all possible excuses for the approach of shipping on their coasts.

The appended letter of Enderby and Mellish to the Board of Trade, 1821, shows that whalers were already beginning to contemplate voyages to these waters.

As to the motive and purpose of this Ukase
the letter of M. de Poletica defines the main, if not the sole, object which prompted it.

The Russian-American Company had been encouraged to push forward discoveries and Settlements on behalf of Russia, south and north of 55° north latitude.

Their monopoly of the fur trade ~~as against~~ ^{which Russia does} Russian subjects was, however, destroyed by the vigorous competition of foreigners.

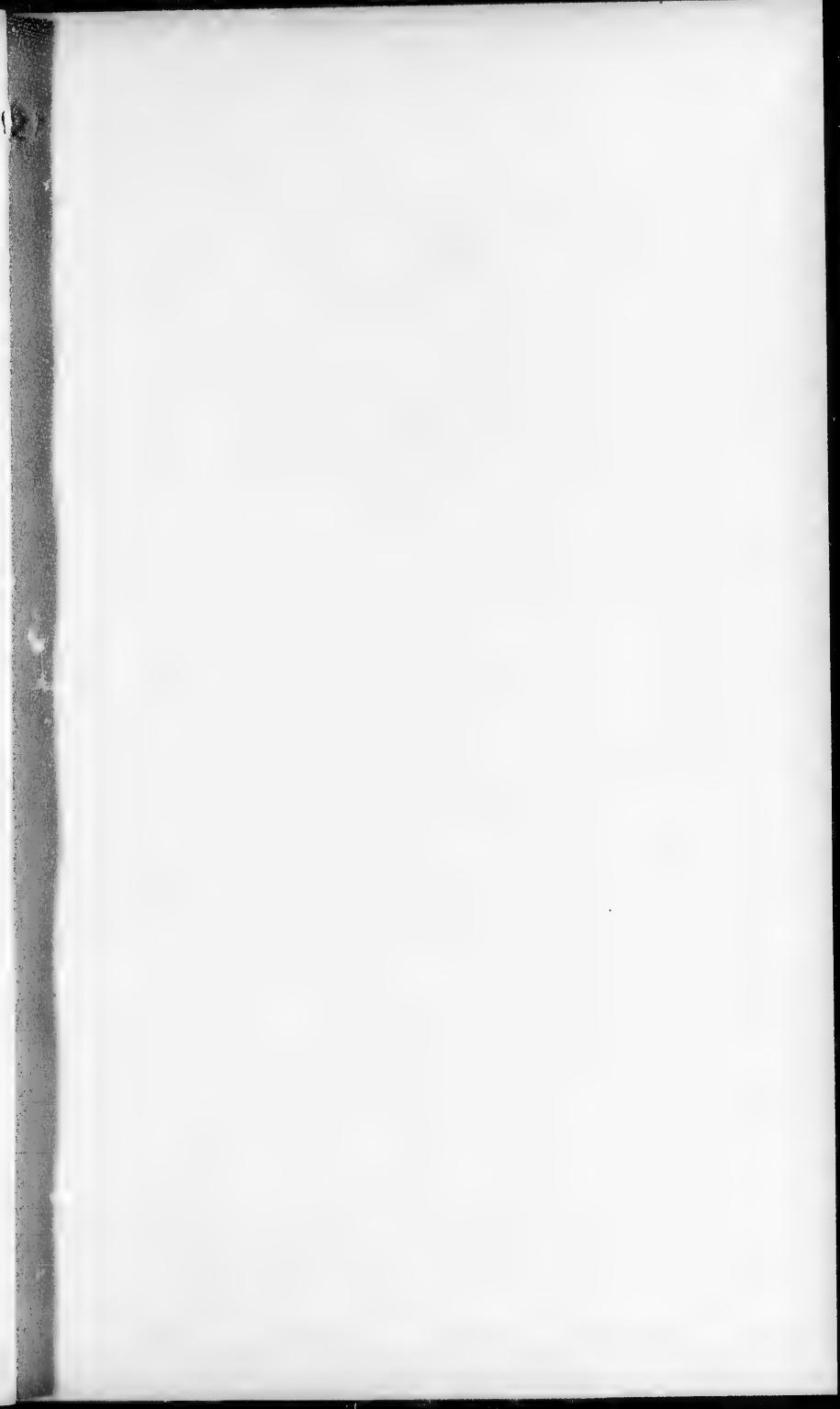
That Russia's aim was to acquire an enormous North American Territory appears by the construction put by M. de Poletica on the Ukase of Paul, and the grant to the Russian-American Company, as a territorial concession down to the 55th degree north, and his justification of its extension to the 51st degree north latitude.

He proceeds to defend the policy of exclusion contained in the Ukase of 1821 by explaining that, as Russian possessions extend from Behring Strait to the 51st degree north latitude on the northwest coast of America, and on the opposite side of Asia and the islands adjacent to the 45th degree, the sea within those limits, viz., that part of the Pacific Ocean was a close sea, over which Russia could exercise exclusive jurisdiction, but he goes on to say that Russia preferred only asserting its essential right without "taking any advantage of localities."

Their object he declares to be the prevention of illicit trade on the part of foreigners, and the furnishing of arms and ammunition to the natives in "the Russian possessions in America" to the injury of the Russian-American Company, and exciting the natives to resist the authorities.

The object of the Ukase, so far as the





attempted exclusion of foreigners from 100 miles of the coasts, from 51° north latitude to Behring Strait is concerned, is further explained by Baron de Nicolai in his note to Lord Londonderry, the 31st October (12th November), 1821.

He insists that the operations of "smugglers" and "adventurers" on the coast "have for their object not only a fraudulent commerce in furs and other articles which are exclusively reserved to the Russian-American Company, but it appears that they often betray a hostile tendency."

"It was," he continues, "therefore necessary to take severe measures against these intrigues and to protect the Company against the hurtful prejudices that resulted, and *it was with that end in view* that the annexed Regulation has been published."

And again. "The Government, however, limited itself, as can be seen by the newly-published Regulation, to forbidding all foreign vessels not only to land on the Settlements of the American Company and on the peninsula of Kamschatka and the coasts of the Okhotsk Sea, but also to sail along the coast of these possessions and, as a rule, to approach them within 100 Italian miles."

In fact the Ukase is predicated upon similar reasons, and proceeds to say:—

"Considering that the principal cause of these losses is the absence of positive Regulations tending to fix the limits of navigation along these coasts."

That the object of the Ukase was to extend territorial jurisdiction over the north-west coast and islands and to prohibit the trade of foreigners rather than to protect any possible fishery of that date or later on is further indicated by 70 of the Regulations under the Ukase of 1821. This Regulation reads:—

"70. A ship of war, after visiting, not only the Company's Settlements, but also, and more particularly, the channels which foreign merchant-vessels are likely to frequent for the purpose of illicit trading with the natives, will return to winter whenever the Government orders it."

So Rule 20 of the "Rules established for the limits of navigation and order of communication along the coast of Eastern Siberia, the north-west coast of America and the Aleutian, Kurile, and other islands," approved by the Emperor on

the 4th September, 1821,* shows that trading vessels were alone in view when the Ukase of 1821 was issued, as it gives a form of information to be given by every foreign ship boarded in the harbour or in the roads.

This form refers only to *cargo* vessels.

The Treaty (Russia
and the United
States).
For text of Treaty,
see Appendix.
April 17, 1824.

The result of these negotiations was the Convention between the United States and Russia of the 17th April, 1824, which put an end to any further pretension on the part of Russia to restrict navigation or fishing in Behring Sea, so far as American citizens were concerned.

Articles I and IV of this Treaty are as follows:—

"ARTICLE I.

"It is agreed that in any part of the Great Ocean, commonly called the Pacific Ocean or South Sea, the respective citizens or subjects of the High Contracting Powers shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts upon points which may not already have been occupied for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following Articles.

"ARTICLE IV.

"It is, nevertheless, understood, that during a term of ten years, counting from the signature of the present Convention, the ships of both Powers, or which belong to their citizens or subjects respectively, may reciprocally frequent, without any hindrance whatever, the interior seas, gulfis, harbours, and creeks upon the coast mentioned in the preceding Article, for the purpose of fishing and trading with the natives of the country." (State Papers, vol. xii, p. 595.)

Handwritten note: 1821
As regards the course taken by Great Britain in view of the claim asserted by Russia.

Handwritten note: 1821
The protest of the
British Govern-
ment.

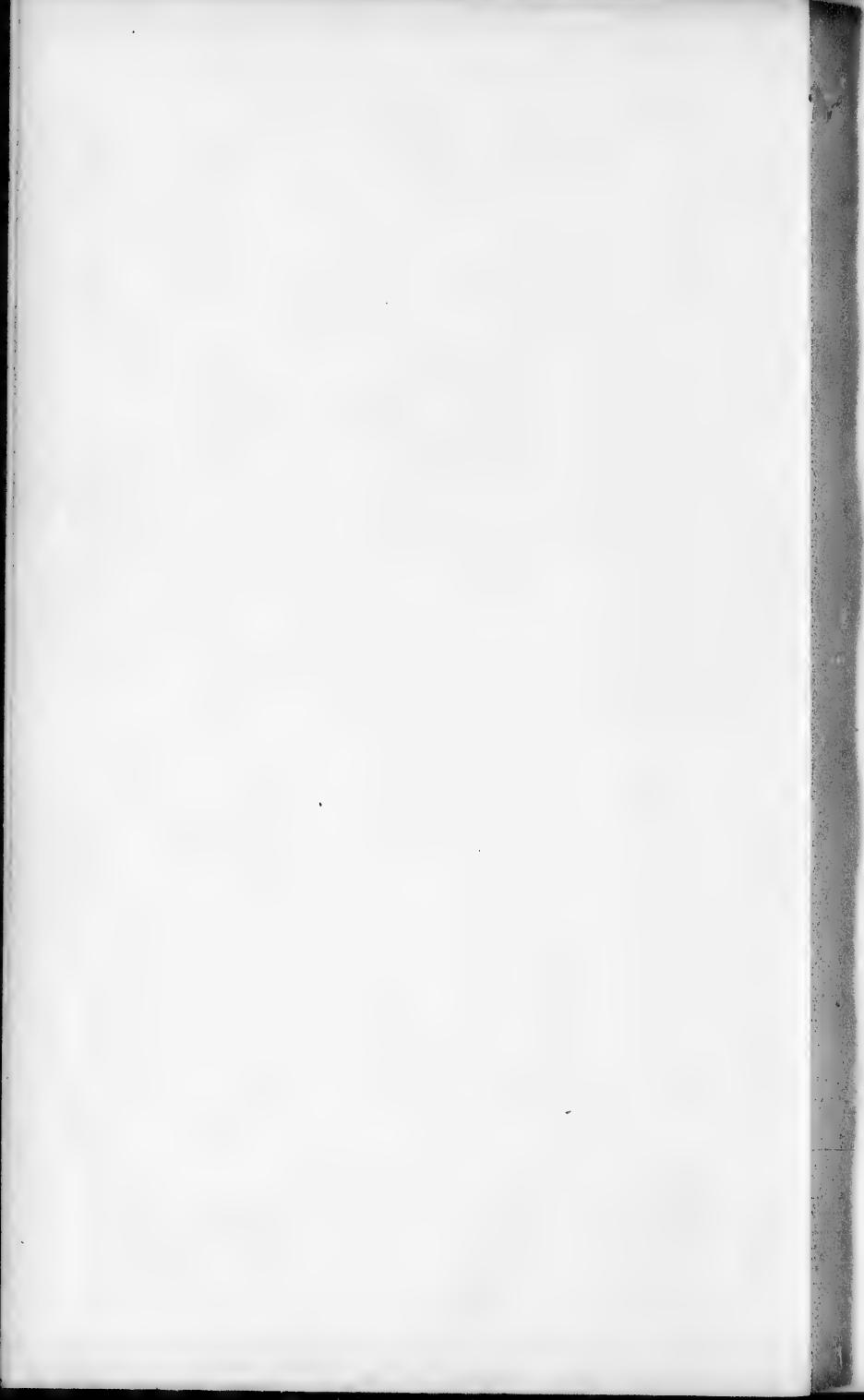
The Ukase was brought to the notice of Lord Londonderry (better known as Lord Castlereagh), the 12th November, 1821, by Baron de Nicolai, then Russian Chargé d'Affaires, as connected with the territorial rights of the Russian Crown on the north-west coast of America, and with the commerce and navigation of the Emperor's subjects in the seas adjacent thereto.

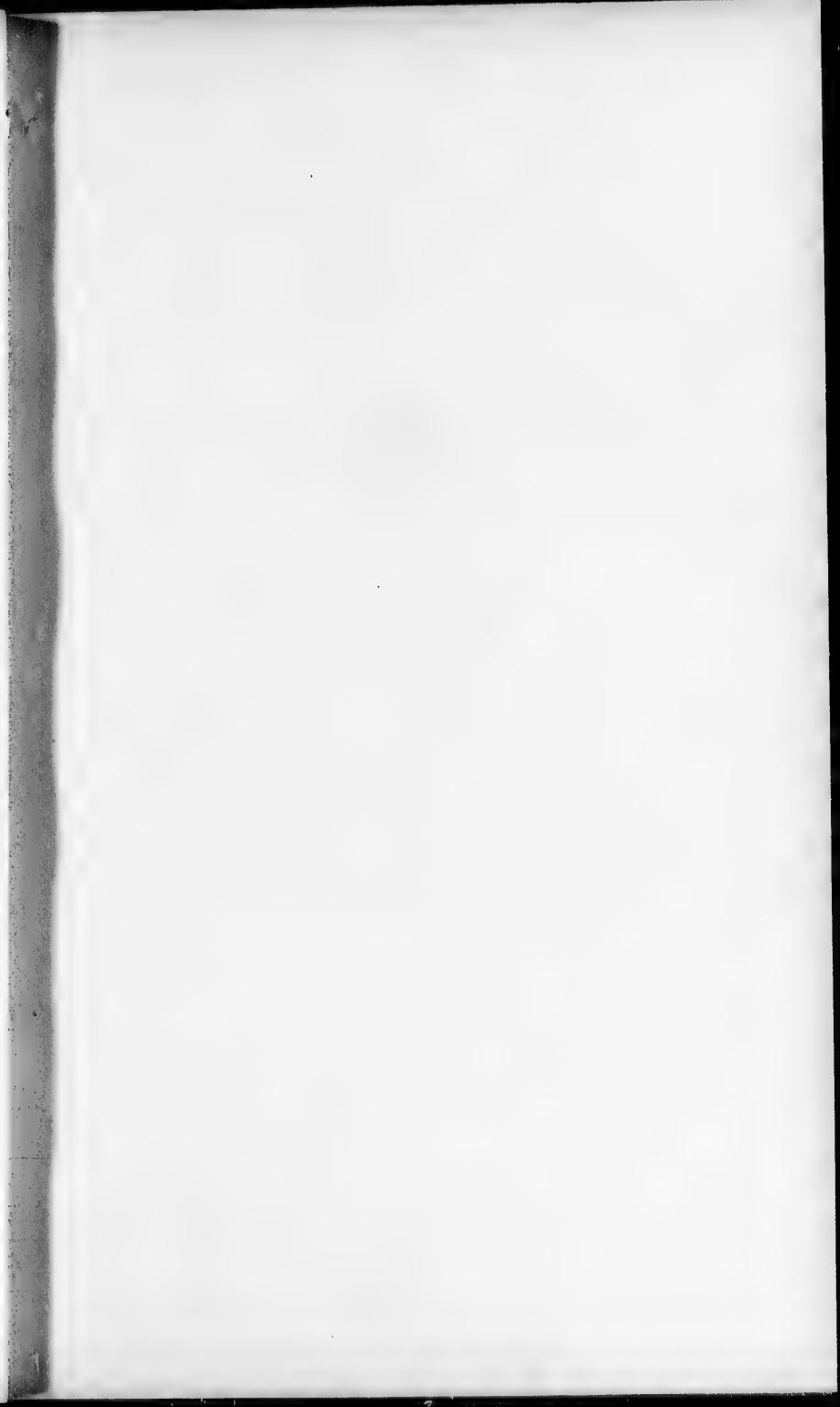
On the 18th January, 1822, four months after the issue of the Ukase, Lord Londonderry, then British Foreign Secretary, wrote in the following terms to Count Lieven, the Russian Ambassador in London:—

See Appendix.

"In the meantime, upon the subject of this Ukase generally, and especially upon the two main principles of

* See Sir C. Bagot to the Marquis of Londonderry, November 17, 1821 (Appendix).





claim laid down therein, viz., an *exclusive sovereignty* alleged to belong to Russia over the territories therein described, as also the *exclusive right of navigating and trading within the limits therein set forth*. His Britannic Majesty must be understood as *hereby reserving all his rights*, not being prepared to admit that the intercourse which is allowed on the face of this instrument to have hitherto subsisted on those coasts and in those seas can be deemed to be illicit; or that the ships of friendly Powers, even supposing an unqualified sovereignty was proved to appertain to the Imperial Crown, in these vast and very imperfectly occupied territories, could, by the acknowledged law of nations, be excluded from navigating within the distance of 100 Italian miles, as therein laid down from the coast, the exclusive dominion of which is assumed (but no His Majesty's Government conceive in error) to belong to His Imperial Majesty the Emperor of All the Russias."

Mr. G. Canning wrote to the Duke of Wellington— See Appendix. on the 27th September, 1822. He also dealt in this despatch with the claim in the Ukase for the extension of territorial rights over adjacent seas to the distance—"unprecedented distance," he terms it—of 100 miles from the coast, and of closing "a hitherto unobstructed passage."

In this despatch Mr. Canning says:—

"I have, indeed, the satisfaction to believe, from a conference which I had had with Count Lieven on this matter, that upon these two points—the attempt to shut up the passage altogether, and the claim of exclusive dominion to so enormous a distance from the coast—the Russian Government are prepared entirely to waive their pretensions. The only effort that has been made to justify the latter claim was by reference to an Article in the Treaty of Utrecht, which assigns 30 leagues from the coast as the distance of prohibition. But to this argument it is sufficient to answer that the assumption of such a space was, in the instance quoted, by stipulation in a Treaty, and one to which, therefore, the party to be affected by it had (whether wisely or not) given its deliberate consent. No inference could be drawn from that transaction in favour of a claim by authority against all the world.

"I have little doubt, therefore, but that the public notification of the claim to consider the portions of the ocean included between the adjoining coasts of America and the Russian Empire as a *mare clausum*, and to extend the exclusive territorial jurisdiction of Russia to 100 Italian miles from the coast, will be publicly recalled; and I have the King's commands to instruct your Grace further to require of the Russian Minister (on the ground of the facts and reasonings furnished in this despatch and its enclosures) that such a portion of territory alone shall be defined as belonging to Russia as shall not interfere with

Abandonment of claim to extraordinary jurisdiction.

the rights and actual possessions of His Majesty's subjects in North America."

On the 17th October in the same year, the Duke of Wellington, Ambassador at Verona, addressed to Count Nesselrode a note containing the following words:—

See Appendix.

"Objecting, as we do, to this claim of exclusive sovereignty on the part of Russia, I might save myself the trouble of discussing the particular mode of its exercise as set forth in this Ukase. But we object to the sovereignty proposed to be exercised under this Ukase not less than we do to the claim of it. *We cannot admit the right of any Power possessing the sovereignty of a country to exclude the vessels of others from the seas on its coasts to the distance of 100 Italian miles.*"

Again, on the 28th November, 1822, the Duke of Wellington addressed a note to Count Lieven, containing the following words:—

See Appendix.

"The second ground on which we object to the Ukase is that His Imperial Majesty thereby excludes from a certain considerable extent of the open sea vessels of other nations. We contend that the assumption of this power is contrary to the law of nations, and we cannot find a negotiation upon a paper in which it is again broadly asserted. We contend that no Power whatever can exclude another from the use of the open sea; a Power can exclude itself from the navigation of a certain coast, sea, &c., by its own act or engagement, but it cannot by right be excluded by another. This we consider as the law of nations, and we cannot negotiate upon a paper in which a right is asserted inconsistent with this principle.

And on the 15th January, 1824, Mr. G. Canning writes Sir C. Bagot:—

See Appendix.

".... The questions at issue between Great Britain and Russia are short and simple. The Russian Ukase contains two objectionable pretensions: First, an extravagant assumption of maritime supremacy; secondly, an unwarranted claim of territorial dominions.

"As to the first, the disavowal of Russia is in substance all that we could desire. Nothing remains for negotiation on that head but to clothe that disavowal in precise and satisfactory terms. We would much rather that those terms should be suggested by Russia herself than have the air of pretending to dictate them; you will therefore request Count Nesselrode to furnish you with his notion of such declaration on this point as may be satisfactory to your Government. That declaration may be made the preamble of the convention of limits.

And again, in a despatch, 24th July, 1824, to Sir C. Bagot, Mr. G. Canning says:—

See Appendix.

".... Your Excellency will observe that there are but two points which have struck Count Lieven as susceptible





of any question: the first, the assumption of the base of the mountains, instead of the summit, as the line of boundary; the second, the extension of the right of the navigation of the Pacific to the sea beyond Behring Straits.

" As to the second point, it is, perhaps, as Count Lieven remarks, new. But it is to be remarked in return that the circumstances under which this additional security is required will be new also.

" By the territorial demarcation agreed to in this 'projet,' Russia will become possessed in acknowledged sovereignty of both sides of Behring Straits.

" The Power which would think of making the Pacific a *mare clausum* may not unnaturally be supposed capable of a disposition to apply the same character to a strait comprehended between two shores, of which it becomes the undisputed owner. But the shutting up of Behring Straits, or the power to shut them up hereafter, would be a thing not to be tolerated by England.

" Nor could we submit to be excluded, either positively or constructively, from a sea in which the skill and science of our seamen has been and is still employed in enterprises interesting not to this country alone, but to the whole civilized world.

" The protection given by the Convention to the American coasts of each Power may (if it is thought necessary) be extended in terms to the coasts of the Russian Asiatic territory; but, in some way or other, if not in the form now prescribed, the free navigation of Behring Straits and of the seas beyond them must be secured to us."

Mr. George Canning in a despatch to Mr. Stratford Canning, when the latter was named Plenipotentiary to negotiate the Treaty of 1825, under date the 8th December, 1824, after giving a summary of the negotiations up to that date, goes on to say:—

" It is comparatively indifferent to us whether we hasten or postpone all questions respecting the limits of territorial possession on the continent of America, but the pretensions of the Russian Ukase of 1821 to exclusive dominion over the Pacific could not continue longer unrepented without compelling us to take some measure of public and effectual remonstrance against it.

" You will, therefore, take care, in the first instance, to repress any attempt to give this change to the character of the negotiation, and will declare, without reserve, that the point to which alone the solicitude of the British Government and the jealousy of the British nation attach any great importance is the doing away (in a manner as little disagreeable to Russia as possible) of the effect of the Ukase of 1821.

* * * *

"The right of the subjects of His Majesty to navigate freely in the Pacific cannot be held as a matter of indul-

For despatch in full, see Appendix.

gence from any Power. Having once been publicly questioned, it must be publicly acknowledged.

" We do not desire that any distinct reference should be made to the Ukase of 1821, but we do feel it necessary that the statement of our right should be clear and positive, and that it should stand forth in the Convention in the place which properly belongs to it as a plain and substantive stipulation, and not be brought in as an incidental consequence of other arrangements to which we attach comparatively little importance.

" This stipulation stands in the grant of the Convention concluded between Russia and the United States of America, and we see no reason why, upon similar claims, we should not obtain exactly the like satisfaction.

" For reasons of the same nature, we cannot consent that the liberty of navigation through Bering Straits should be stated in the Treaty as a boon from Russia.

" The tendency of such a statement would be to give countenance to those claims of exclusive jurisdiction against which we, on our own behalf and on behalf of the whole civilized world, protest.

* * * *

" It will, of course, strike the Russian Plenipotentiaries that, by the adoption of the American Article respecting navigation, &c., the provision for an excessive fishery of 2 leagues from the coasts of our respective possessions falls to the ground.

" But the omission is, in truth, immaterial.

" The law of nations assigns the exclusive sovereignty of 1 league to each Power off its own coasts, without any specified stipulation; and though Sir Charles Bagot was authorized to sign the Convention with the specific stipulation of 2 leagues, in ignorance of what had been decided in the American Convention at the time, yet, after that Convention has been some months before the world, and after the opportunity of reconsideration has been forced upon us by the act of Russia herself, we cannot now consent, in negotiating *de novo*, to a stipulation which, while it is absolutely unimportant to any practical good, would appear to establish a contract between the United States and us to our disadvantage."

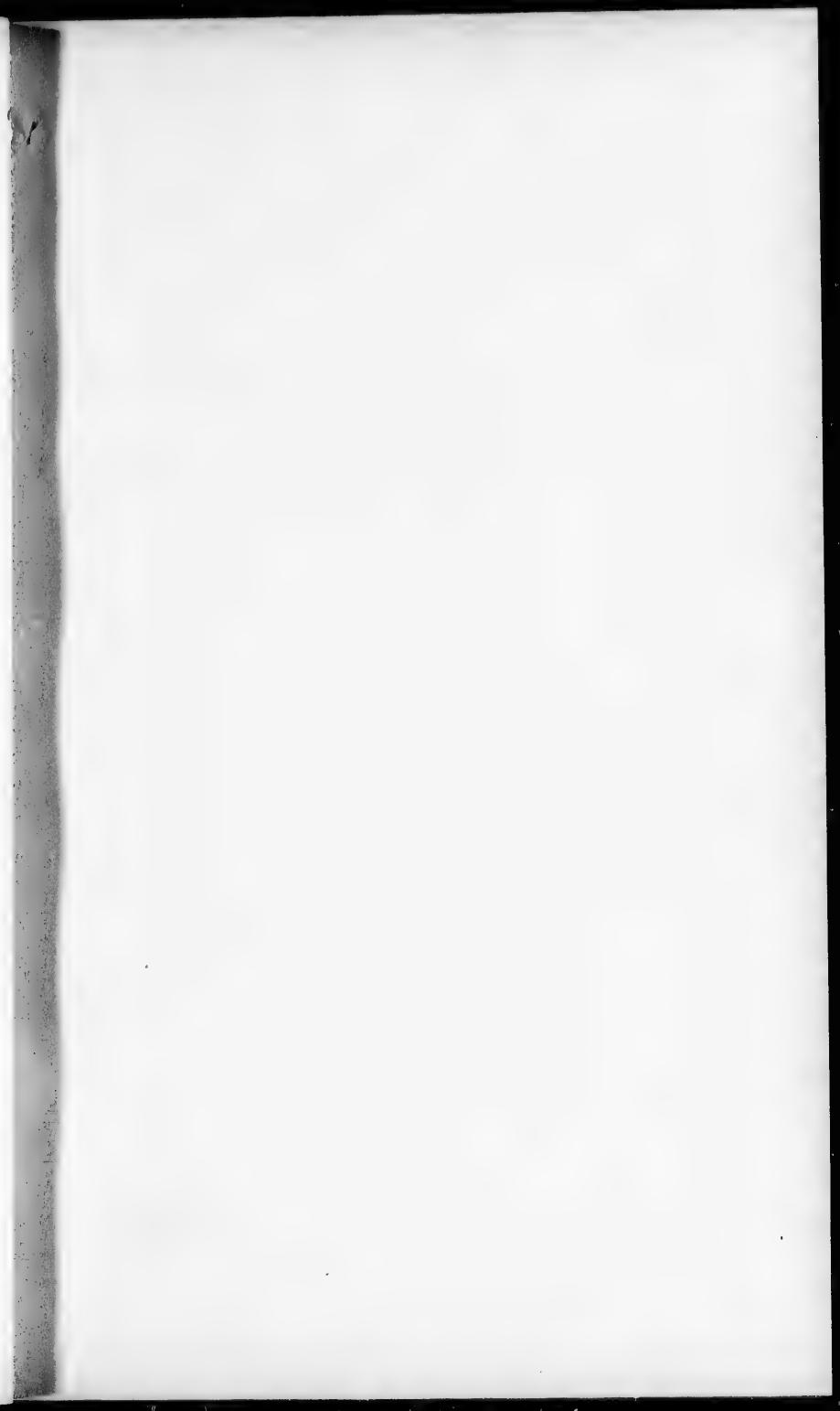
The Treaty (Great Britain and Russia),
February 28, 1825.

These negotiations resulted in a Convention with Great Britain, signed on the 18th February, 1825, substantially similar to that with the United States.

The following are some of the important clauses of this Convention :—

" I. It is agreed that the respective subjects of the High Contracting Parties shall not be troubled or molested in any part of the ocean, commonly called the Pacific Ocean, either in navigating the same or fishing therein, or in landing at such parts of the coast as shall not have been already occupied, in order to trade with the natives, under the restrictions and conditions specified in the following Articles :





"II. In order to prevent the right of navigating and fishing, exercised upon the ocean by the subjects of the High Contracting Parties, from becoming the pretext for an illicit commerce, it is agreed that the subjects of His Britannic Majesty shall not land at any place where there may be a Russian establishment without the permission of the Governor or Commandant; and, on the other hand, that Russian subjects shall not land, without permission at any British establishment on the north-west coast.

"III. The line of demarcation between the possessions of the High Contracting Parties, upon the coast of the continent, and the islands of America to the north-west, shall be drawn in the manner following:

"Commencing from the southernmost part of the island called Prince of Wales' Island, which point lies in the parallel of 54° 40' north latitude, and between the 131st and the 133rd degree of west longitude (meridian of Greenwich), the said line shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56th degree of north latitude; from this last-mentioned point, the line of demarcation shall follow the summit of the mountains situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude (of the same meridian); and, finally, from the said point of intersection and the said meridian-line of the 141st degree, in its prolongation as far as the Frozen Ocean, shall form the limit between the Russian and British possessions on the continent of America to the north-west.

"IV. With reference to the line of demarcation laid down in the preceding Article, it is understood—

"First. That the island called Prince of Wales' Island shall belong wholly to Russia.

"Secondly. That wherever the summit of the mountains which extend in a direction parallel to the coast, from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude, shall prove to be at the distance of more than 10 marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia, as above mentioned, shall be formed by a line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom.

"V. It is moreover agreed, that no establishment shall be formed by either of the two parties within the limits assigned by the two preceding Articles to the possession of the other; consequently, British subjects shall not form any establishment either upon the coast or upon the border of the continent comprised within the limits of the Russian possessions, as designated in the two preceding Articles; and, in like manner, no establishment shall be formed by Russian subjects beyond the said limits.

"VI. It is understood that the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the ocean or from the interior of the continent, shall for ever enjoy the right of navigating freely, and without **any hindrance** whatever, all the rivers and streams which,

in their course towards the Pacific Ocean, may cross the line of demarcation upon the line of coast described in Article III of the present Convention.

"VII. It is also understood that, for the space of ten years from the signature of the present Convention, the vessels of the two Powers, or those belonging to their respective subjects, shall mutually be at liberty to frequent, without any hindrance whatever, all the inland seas, the gulfs, havens, and creeks on the coast mentioned in Article III, for the purposes of fishing and of trading with the natives."

The claim of Russia attracted much attention at the time. Mr. Madison wrote to President Monroe :—

"The Convention with Russia is a propitious event, as substituting amicable adjustment for the risk of hostile collision. But I give the Emperor little credit, however, for his assent to the principle of '*mare liberum*' in the North Pacific. His pretensions were so absurd and so disgusting to the maritime world, that he could not do better than retreat from them through the form of negotiation. It is well that the cautious, if not courteous, policy of England towards Russia has had the effect of making us, in the public eye, the leading Power in arresting her expansive ambition."

Mr. Stratford Canning, in his despatch of the 1st March, 1825, inclosing the Convention as signed, says :—

"With respect to Bering Straits, I am happy to have it in my power to assure you, on the joint authority of the Russian Plenipotentiaries, that the Emperor of All the Russias has no intention whatever of maintaining any exclusive claim to the navigation of these straits, or of the seas to the north of them."

Mr. Canning, writing to the Right Honourable G. Canning, 3rd (15th) April, 1825, said :—

See Appendix.

" . . . With respect to the right of fishing, no explanation whatever took place between the Plenipotentiaries and myself in the course of our negotiations. As no objection was started by them to the Article which I offered in obedience to your instructions, I thought it inadvisable to raise a discussion on the question, and the distance from the coast at which the right of fishing is to be exercised in common passed without specification, and consequently rests on the law of nations as generally received.

"Conceiving, however, at a later period, that you might possibly wish to declare the law of nations thereon jointly with the Court of Russia in some ostensible shape, I broached the matter anew to Count Nesselrode, and





suggested that he should authorize Count Lieven, on your invitation, to exchange notes with you declaratory of the law as fixing the distance at 1 marine league from the shore. Count Nesselrode replied that he should feel embarrassed in submitting this suggestion to the Emperor just at the moment when the ratifications of the Convention were on the point of being dispatched to London, and he seemed exceedingly desirous that nothing should happen to retard the accomplishment of that essential formality. He assured me at the same time that his Government would be content, in executing the Convention, to abide by the recognized law of nations, and that if any question should hereafter be raised upon the subject, he should not refuse to join in making the suggested declaration on being satisfied that the general rule under the law of nations was such as we supposed.

"Having no authority to press the point in question, I took the assurance thus given by Count Nesselrode as sufficient in all probability to answer every national purpose. . . ."

In reference to this Convention of 1824, Wharton, in his "Digest of the International Law of the United States of America," section 159, vol. ii, p. 226, cites President Monroe's communication to Mr. Madison on the 2nd August, 1824, to the effect that "by this Convention the claim of *mare clausum* is given up; a very high northern latitude is established for the boundary with Russia, and our trade with the Indians placed for ten years on a perfectly free footing, and after that term left open for negotiation. . . . England will, of course, have a similar stipulation in favour of the free navigation of the Pacific, but we shall have the credit of having taken the lead in the affair."

These extracts show conclusively—

1. That England refused to admit any part of the Russian claim asserted by the Ukase of 1821 to a maritime jurisdiction and exclusive right of fishing throughout the whole extent of that claim, from Behring Straits to the 51st parallel;
2. That the Convention of 1825 was regarded on both sides as a renunciation on the part of Russia of that claim in its entirety.

Whatever exclusive jurisdiction either in Behring Sea, or in the seal fisheries thereof, was claimed by Russia, is covered by the language of the Ukase of Alexander, or was never set up.

It has been shown that the claims to exclusive jurisdiction or control of the fisheries or of navigation put forward by the Ukase from Behring

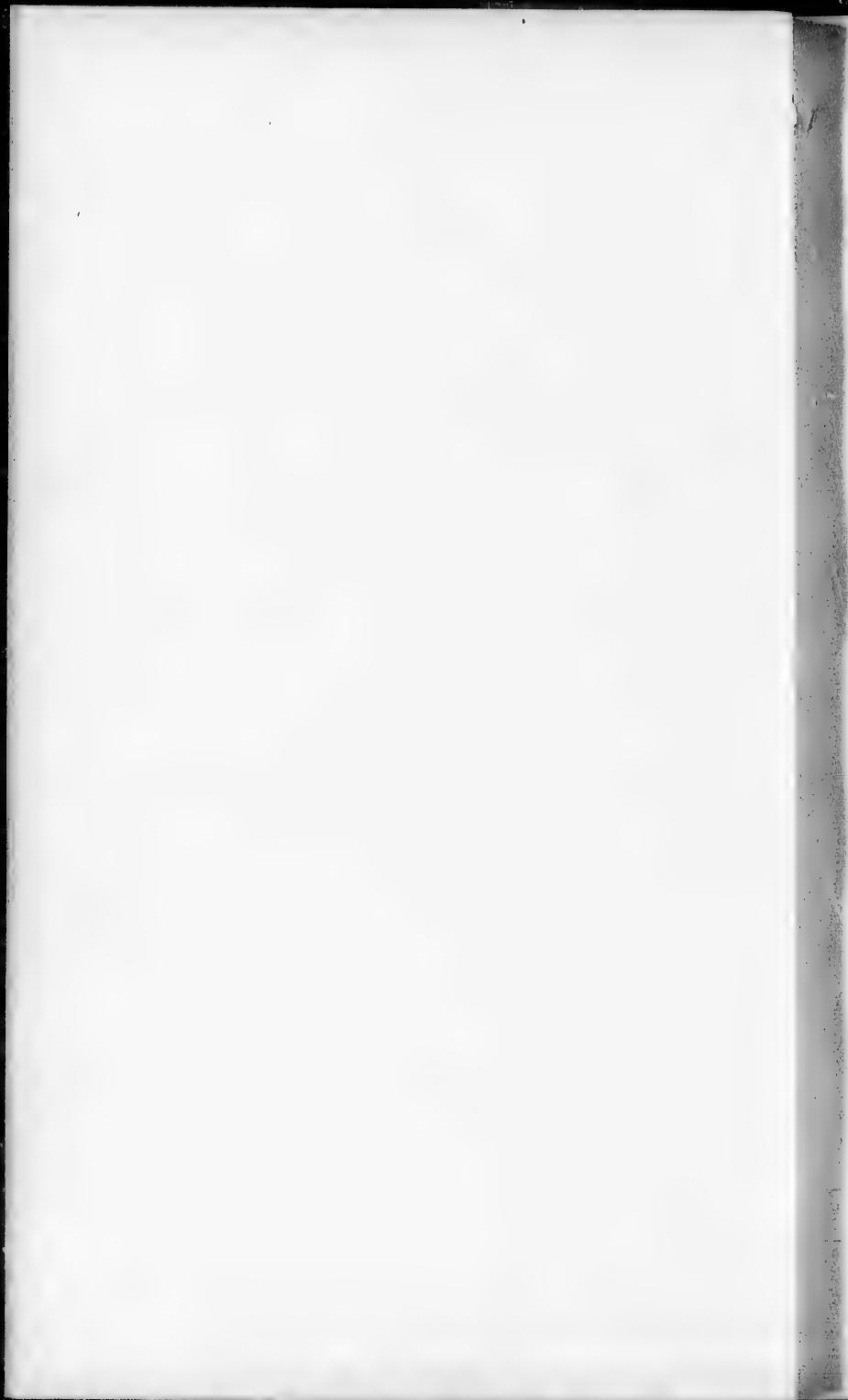
Sea south were neither recognized nor conceded by any Power.

The objection and protest by Great Britain and the United States of America were as wide as the claim.

It will be observed, as, for instance, in the Convention between Great Britain and Russia, how completely the pretensions of the Ukase of 1821 were dissolved.

The right of navigating and of fishing is conceded to British vessels "in any part of the ocean commonly called the Pacific Ocean."

A Conventional boundary-line is agreed upon, and, while it is agreed that no Settlements north of this will be made by Great Britain and none south by Russia, British vessels are expressly allowed, not only to navigate and fish in all parts of the ocean, but may trade on any part of the coast which "shall not already have been occupied," and this as far north as the Frozen Ocean.





CHAPTER III. IVPOINTS I AND II.—*The User of the Waters in question from 1821 to 1867.*

As regards the user of the waters in question, it has been seen that ~~from 1790 to 1821~~ Russia did not attempt to assert or exercise jurisdiction over foreign vessels when outside of the ordinary territorial jurisdiction.

The same is true of the period between 1821 and 1867.

1821. Mouravieff was sent out to take control at Sitka under the new Charter. He assumed the name of "Governor" in place of that of "Chief Manager," which had previously been employed.

The names of seven trading-vessels on the north-west coast are known for this year.

*Alaska, pp. 534,
535.*

Pp. 340, 341.

1822. The "Rurik" arrived at Sitka from Kronstadt with supplies. About the close of the year the Russian sloop-of-war "Apollo" also arrived, with instructions that all trade with foreigners should cease. This interdict remained in force for two years, and seriously interfered with the profits of the Company. Not satisfied with prohibiting foreign trade, the Russian Government issued an Order forbidding the approach of any foreign vessel within 30 leagues of the coast."

In this year also the Russian sloops-of-war "Kreisser" and "Ladoga" arrived to receive the provisions of the Ukase, and remained for two years. The American brig "Pearl" was seized.

In 1822, acting under the authority of the Ukase of 1821, the United States' brig "Pearl," when on a voyage from Boston to Sitka, was seized by the Russian sloop "Apollo."

She was, however, released in 1824, and compensation was paid for her arrest and detention.

*Dale's Alaska,
pp. 233, 234.*

Count Nesselrode, in his despatch to Count Lieven, 26th June, 1823, when communicating the suspension of the Ukase of 1821, says the advices of it were sent from St. Petersburg in August of 1823, and that the officer of the "Apollo" could not receive them before September 1824, and that, therefore, he could not have known of them at the "time of the occurrence of the incident reported by the American press."

Alaska, p. 546.

Ibid., pp. 187-189.

North-west Coast,
p. 341.

Alaska, p. 540.
Ibid., p. 541.

North-west Coast,
p. 341.

Alaska, p. 539.

Ibid., p. 544.

North-west Coast,
p. 341.

Alaska, p. 546.

Ibid.

North-west Coast,
p. 341.

Alaska, p. 546.

Letter of Brewer to
Amory, p. 85, Ex.
Doc. Nos. 157, 180,
2nd Sess., 40th
Cong.

An exploratory expedition was dispatched from Sitka to the eastern shore of Behring Sea, which remained absent two years.

In 1823. Threatened ~~starvation~~ ^{from} at Sitka and on its coast, ~~of~~ the "Rurik" and an American vessel which had been purchased, were sent to California and the Sandwich Islands for supplies.

"As in this instance, the Colonies had frequently been relieved from want by trade with foreigners; and, indeed, this was too often the only means of averting starvation. Even between 1818 and 1822, when supplies were comparatively abundant, goods, consisting mainly of provisions, were obtained by traffic with American and English coasters to the value of more than 300,000 roubles in scrip."

The "Rob Roy," from Boston, is known to have been on the north-west coast.

1824. Kotzebue, in the "Predpriatic," called at Sitka. About this time the shareholders of the Russian Company protested against the interdict of foreign trade, and Sitka was, in consequence, again opened to such trade. The American brig "Pearl" was released, and compensation paid to the owners.

Four vessels are recorded as having visited the north-west coast, and some of them are known to have repeated this visit in later years.

1825. The "Elena" arrived at Sitka with supplies. Kotzebue also again called at Sitka.

Remonstrances were addressed by the Company to the Russian Government as to the effect of the Conventions of 1824 and 1825.

The name of but one vessel trading on the north-west coast has been preserved in this year.

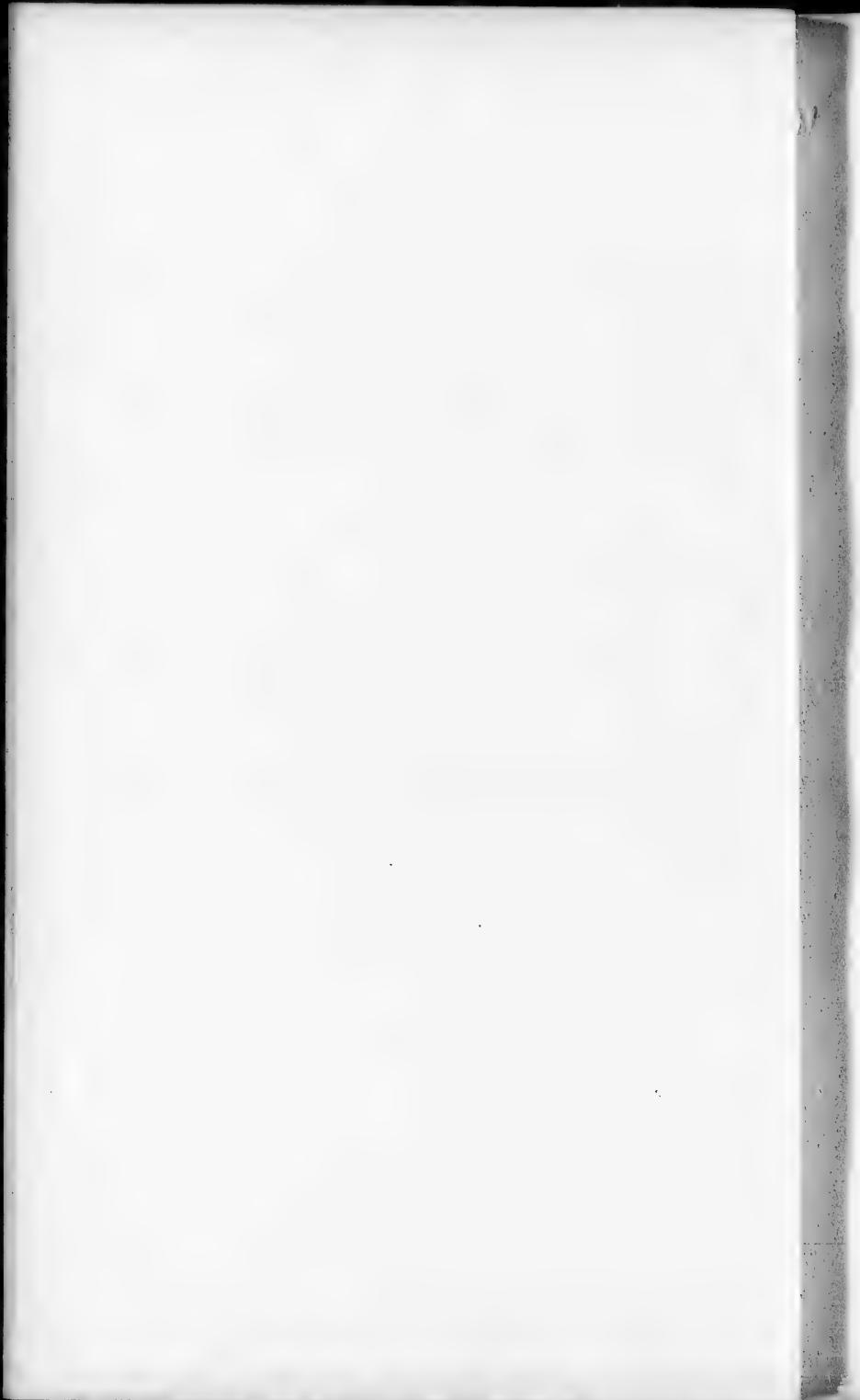
1826. Chistiakov wrote to the Directors of the Company asking that an experienced whaler should be sent out.

1827. Lütke, sent by the Russian Government, arrived at Sitka, and there often made explorations in the Aleutian Islands and in Behring Sea.

Two vessels only of the trading fleet on the north-west coast are in this year known by name.

1828. Two vessels belonging to Lütke's expedition carried on surveys in Behring Sea. The trading-vessel "Eliza" was again at Sitka.

In the years 1826, 1827, and 1828 the "Chinchella," a United States' brig, Thomas Meek, master, traded between Sitka and China, and



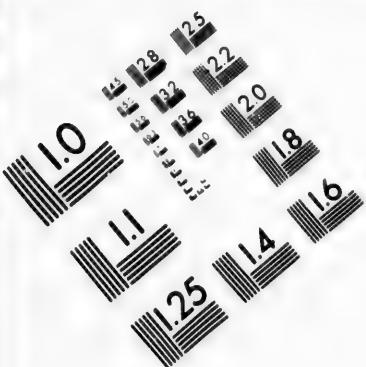
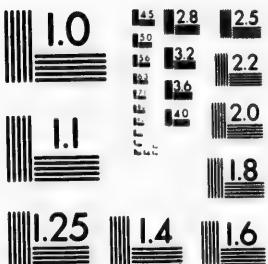
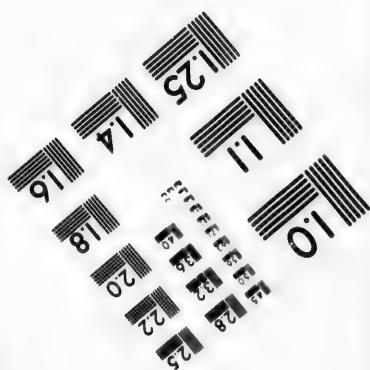
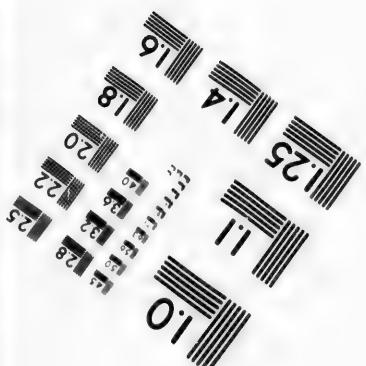


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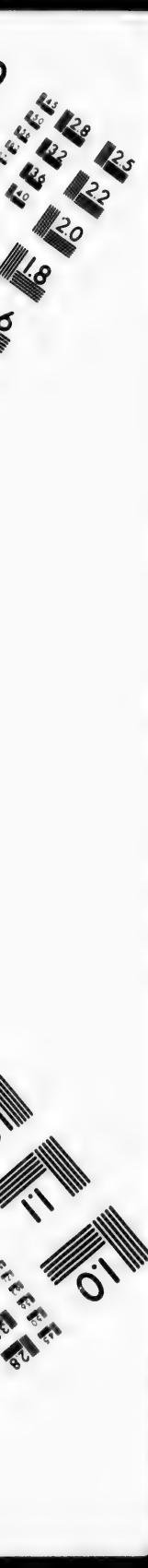


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between 1840 and 1845 every year 300 whale-ships of the United States were on the north-west whaling-grounds, which extended from 50° to 60° north and from 130° to 170° east, including Bristol Bay in Behring Sea.

1829. A vessel was sent from Sitka to Chile *Alaska*, p. 565. to trade. Some explorations were also made by the Russians in the inland country.

1830. Explorations in Behring Sea by Etholen. *Ibid.*, p. 547. The names of four or five vessels trading on the North-west Coast, north-west coast in this and the following year p. 341. are recorded. Wrangell relieved Chistiakof in command.

1832 or 1833. Tebenkof established a post *Alaska*, pp. 548-552. near the mouth of the Yakon, and explorations 552. were conducted inland.

1833. The Hudson's Bay Company sent the *Ibid.*, p. 555. "Dryad" to form an Establishment at the mouth of the Stikine, but Wrangell, having heard of the enterprise, occupied the place in advance, and turned the vessel back. Damages to the amount of 20,000*l.* were claimed through the British Government from Russia. An American whaling *Ibid.*, p. 553. master, under a five-years' contract, arrived at Sitka, but achieved little. The whole fisheries still remained in the hands of foreigners.

1834. The name of but one of the trading *North-west Coast*, vessels on the north-west coast in this year is p. 341. known.

1836. The "Eliza" was again at Sitka in this *Ibid.*, pp. 341, 342. year, and three trading vessels are recorded to have visited the Alaskan coast.

In 1836 the United States' brig "Loriot," B., master, sailed for the north-west coast of America for the purpose of procuring provisions, and also Indians to hunt for sea-otters on the coast.

When in the Harbour of Saksessan, latitude 54° 55' north, and longitude 132° 30' west, a Russian armed brig ordered the United States' vessel to leave,

This action was based on the expiration of the period named in the IVth Article of the Treaty, whereby, for ten years only, liberty to touch and trade at Russian Establishments on the coast was granted.

The United States protested against this action *Forsyth to Dallas*, as an "outrage." *May 4, 1837.*

The following were the instructions of the United States' Secretary of State to Mr. Dallas, the Minister at St. Petersburg :—

"On the other hand, should there prove to be no Russian Establishments at the places mentioned, this outrage on the 'Loriot' assumes a still graver aspect. It is a violation of the right of the citizens of the United States, immemorially exercised, and secured to them as well by the law of nations as by the stipulations of the 1st Article of the Convention of 1824, to fish in those seas, and to resort to the coast, for the prosecution of their lawful commerce upon points not already occupied. As such, it is the President's wish that you should remonstrate, in an earnest but respectful tone, against this groundless assumption of the Russian Fur Company, and claim from His Imperial Majesty's Government for the owners of the brig 'Loriot,' for their losses and for the damages they have sustained, such indemnification as may, on an investigation of the case, be found to be justly due to them.

"I am, &c.

"JOHN FORSYTH."

Dallas to Forsyth,
August 16, 1837.

Forsyth to Dallas,
November 3, 1837
(Appendix).

From subsequent inquiries, it appeared that Russian Establishments had been made at the places mentioned.

Nevertheless, the United States contended that at the expiration of the IVth Article, the law of nations practically gave United States' ships the privileges therein mentioned.

Mr. Forsyth, Secretary of State for the United States, writing to Mr. Dallas on the 3rd November, 1837, and referring to the 1st Article of the Convention of April 1824 between the United States and Russia, said :—

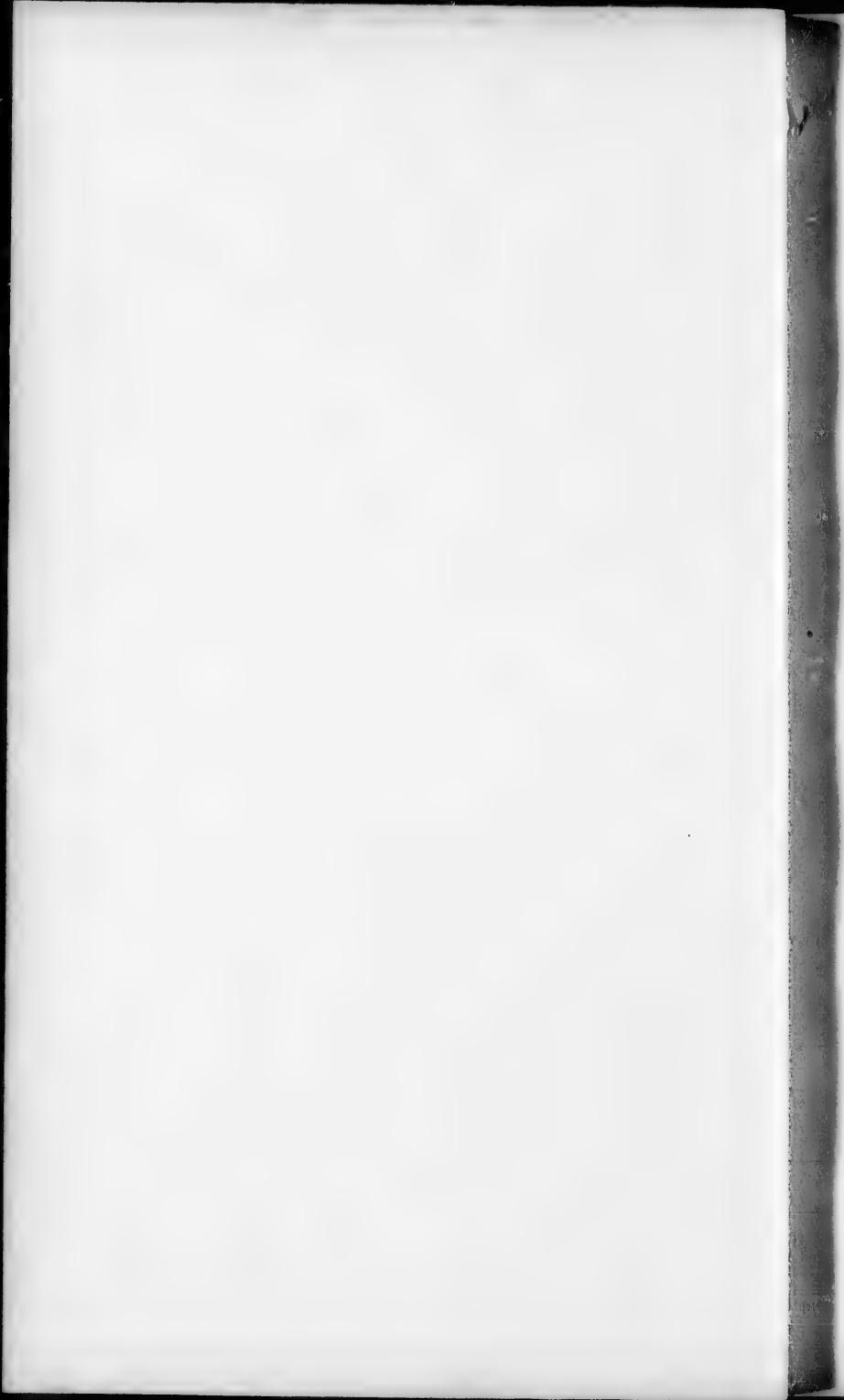
"The 1st Article of that instrument is only declaratory of a right which the parties to it possessed under the law of nations without conventional stipulations, to wit: to navigate and fish in the ocean upon an unoccupied coast, and to resort to such coast for the purpose of trading with the natives.

"It is a violation of the right of the citizens of the United States, immemorially exercised and secured to them, as well by the law of nations as by the stipulations of the 1st Article of the Convention of 1824, to fish in those seas and to resort to the coast for the prosecution of their lawful commerce upon points not already occupied.

"The United States, in agreeing not to form new establishments to the north of latitude of 54° 40' N., made no acknowledgment of the right of Russia to the territory above that line."

And, again :—

"It cannot follow that the United States ever intended to abandon the just right acknowledged by the 1st Article to belong to them under the law of nations—to frequent any part of the unoccupied coast of North America for the





purpose of fishing or trading with the natives. All that the Convention admits is an inference of the right of Russia to acquire possession, by settlement, north of 54° 40' N. Until that actual possession is taken, the 1st Article of the Convention acknowledges the right of the United States to fish and trade as prior to its negotiation."

In his despatch of the 23rd February, 1838, Count Nesselrode said :—

"It is true, indeed, that the 1st Article of the Convention of 1821, to which the proprietors of the 'Loriot' appeal, secures to the citizens of the United States entire liberty of navigation in the Pacific Ocean, as well as the right of landing without disturbance upon *all points on the north-west coast of America* not already occupied, and to trade with the natives."

Mr. Dallas (16th August, 1837), when representing the United States at St. Petersburg, wrote to the Secretary of State :—

"The 1st Article asserts for both countries general and permanent rights of navigation, fishing and trading with the natives, upon points not occupied by either, *north or south of the agreed parallel of latitude.*"

In 1838, Mr. Dallas, in a despatch to Count Nesselrode, interpreted Article I of the Convention as being applicable to *any part of the Pacific Ocean.*

Mr. Dallas, in this despatch of the 5th (17th) March, 1838, to Count Nesselrode, said :—

" . . . The right of the citizens of the United States to navigate the Pacific Ocean, and their right to trade with the aboriginal natives of the north-west coast of America, without the jurisdiction of other nations, are rights which constituted a part of their independence as soon as they declared it. They are rights founded in the law of nations, enjoyed in common with all other independent sovereignties, and incapable of being abridged or extinguished except with their own consent. It is unknown to the Undersigned that they have voluntarily conceded these rights, or either of them, at any time, through the agency of their Government, by Treaty or other form of obligation, in favour of any community.

* * * *

"There is, first, a mutual and permanent Agreement declaratory of their respective rights, without disturbance or restraint, to navigate and fish in any part of the Pacific Ocean, and to resort to its coasts upon points which may not already have been occupied, in order to trade with the natives. These rights pre-existed in each, and were not fresh liberties resulting from the stipulation. To navigate, to fish, and to coast, as described, were rights of equal

certainty, springing from the same source and attached to the same quality of nationality. Their exercise, however, was subjected to certain restrictions and conditions, to the effect that the citizens and subjects of the contracting sovereignties should not resort to points where establishments existed without obtaining permission; that no future establishments should be formed by one party north, nor by the other party south, of 54° 40' north latitude; but that, nevertheless, both might, for a term of ten years, without regard to whether an establishment existed or not, without obtaining permission, without any hindrance whatever, frequent the interior seas, gulfs, harbours, and creeks, to fish and trade with the natives. This short analysis leaves, on the question at issue, no room for construction.

* * *

"The Undersigned submits that in no sense can the IVth Article be understood as implying an acknowledgment on the part of the United States of the right of Russia to the possession of the coast above the latitude of 54° 40' north."

North-west Coast,
p. 342.

Alaska, pp. 552,
558.

North-west Coast;
p. 342.

Alaska, pp. 556,
557.

Ibid., p. 557.

Ibid., p. 583.

Ibid., p. 559.

Ibid., p. 568.

1837. One trading-vessel is named as having been on the north-west coast.

1838. Further explorations were undertaken in the north by Chernof and Malakhof. Three trading-vessels are noted as having been on the north-west coast in this year, and one is known to have visited Alaskan waters.

1839. A Commission met in London to arrange the dispute between the Hudson's Bay and Russian-American Companies. The claim for damages by the former Company was waived, on condition that the latter should grant a lease of all their continental territory northward to Cape Spencer, Cross Sound (about latitude 58°), on a fixed rental. This arrangement was for ten years, but was renewed, and actually continued in force for twenty-eight years.

1840. The British flag was hoisted and saluted at the mouth of the Stikine, the Hudson's Bay Company taking possession. A fort was also established by the Company at Taku Inlet. Etholen reported the presence of fifty foreign whalers in Behring Sea. At this time whalers were just beginning to find their way to Behring Sea, and in 1840 to 1842 a large part of the fleet was engaged in whaling on the Kodiak grounds.

Etholen relieved Kuprianof as Governor at Sitka.

1841. The Charter by the Russian-American Company was renewed for a further term of twenty years.



18

According to Etholen, thirty foreign whalers Alaska, p. 583. were in Behring Sea. He asks the Russian Government to send cruizers to preserve this sea as a *mare clausum*.

1842. Inland explorations by Zegoskin, which *Ibid.*, pp. 553, 554, continued till 1844, begun. Sir George Simpson, *Ibid.*, pp. 558-560, Governor of the Hudson's Bay Company, reached the Stikine post just in time to prevent an Indian uprising. He also visited the Russian Establishment at Sitka and completed an arrangement between the Companies to interdict trade in spirits on the coast.

The whalers, from 1843 to 1850, landed on Ineffectual attempt of Russian-American Company to stop fur-traffic and whaling. the Aleutian and Kurile Islands, committing depredations. American captains openly carried *Bancroft*, pp. 583, 384. on a traffic in furs with the natives.

The Russian-American Company became alarmed at the danger to their fur trade.

Every effort was, therefore, put forward by the Company and the Governors to induce the Foreign Office of the Russian Government to drive off these whalers from the coasts, and by excluding them for a great distance from shore, prevent the trespasser on shore and the traffic in furs.

Accordingly, in a letter from the Department Interpretation of Treaty by Russia of Manufactures and Internal Trade to the Extract from Governor of the Russian-American Company of "Tikhmenieff," pp. 24, 25. the 14th December, 1842, in reply to his complaint as to proceedings of American whalers in Appendix. Behring Sea, the following passage occurs:—

"The claim to a *mare clausum*, if we wished to advance such a claim in respect to the northern part of the Pacific Ocean, could not be theoretically justified. Under Article I of the Convention of 1824 between Russia and the United States, which is still in force, American citizens have a right to fish in all parts of the Pacific Ocean. But under Article IV of the same Convention, the ten years' period mentioned in that Article having expired, we have power to forbid American vessels to visit inland seas, gulf, harbours, and bays for the purposes of fishing and trading with the natives. That is the limit of our rights, and we have no power to prevent American ships from taking whales in the open sea."

1843. Explorations were carried on on the Alaska, p. 576. Sustchina and Copper Rivers.

"From 1843 to 1850 there were constant complaints by Tikhmenieff. the Company of the increasing boldness of the whalers."

1846. The Governor-General of Eastern Siberia asked that foreign whalers should not be allowed

to come within 40 Italian miles of the Russian shores, and that a tax be imposed on them. The Russian Foreign Office replied :—

Tikhmenieff.

" We have no right to exclude foreign ships from that part of the Great Ocean which separates the eastern shore of Siberia from the north-western shore of America, or to make the payment of a sum of money a condition to allowing them to take whale.

It was added that three Italian miles from the shores was the only recognized limit of control. The abandonment of the claims made in the Uksae of 1821 was thus definitely confirmed. In this year the Japan Sea was found to be a good whaling ground, and in immediately following years whaling began to be extensively carried on about Kamtschatka and in Okhotsk Sea.

Tikhmenieff thus describes the result of these representations :—

" The exact words of the letter from the Foreign Office are as follows :—

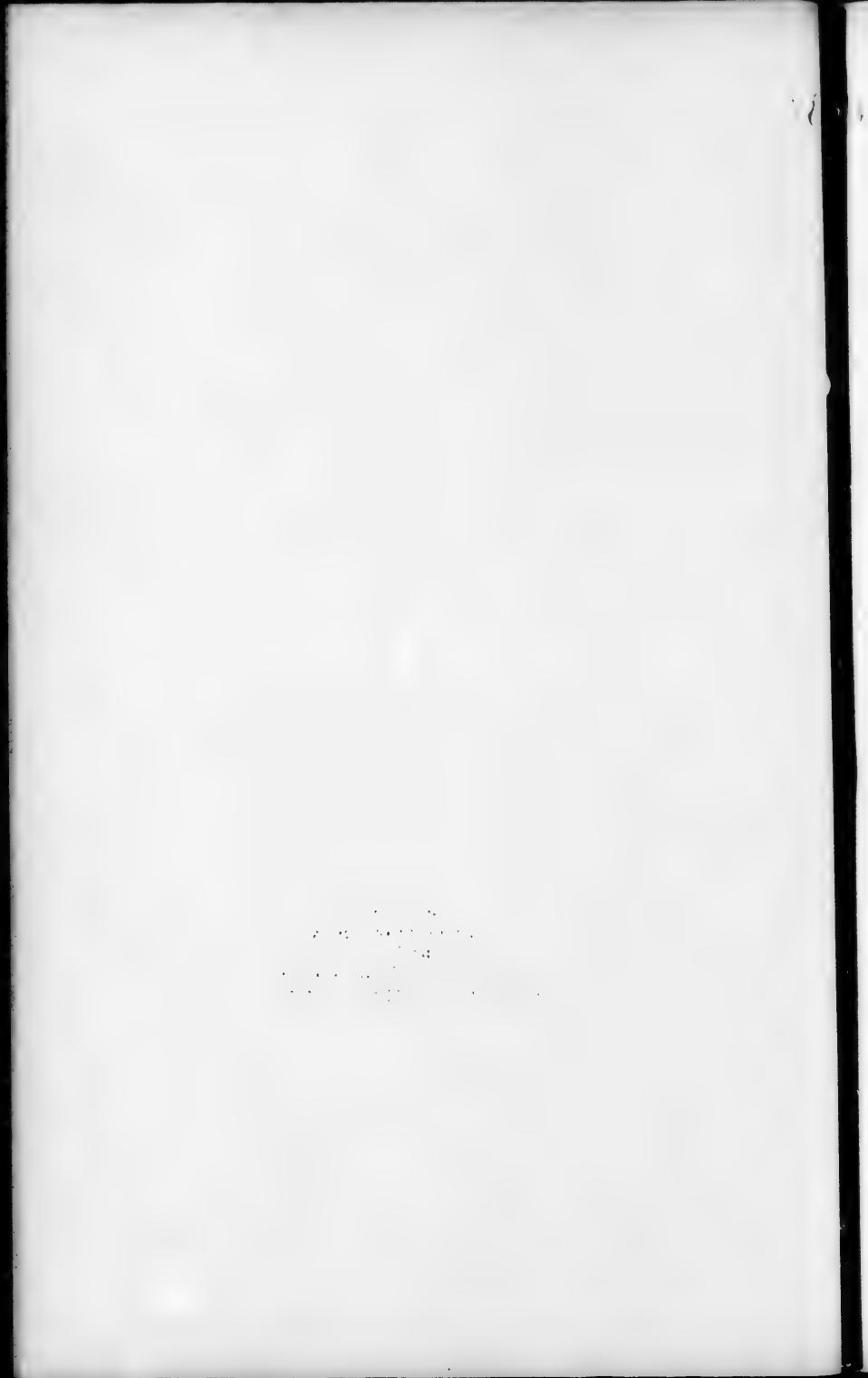
" 'The fixing of a line at sea within which foreign vessels should be prohibited from whaling off our shores would not be in accordance with the spirit of the Convention of 1824, and would be contrary to the provisions of our Convention of 1825 with Great Britain. Moreover, the adoption of such a measure, without preliminary negotiation and arrangement with the other Powers, might lead to protests, since no clear and uniform agreement has yet been arrived at among nations in regard to the limit of jurisdiction at sea.'

" In 1847 a representation from Governor Tebenkoff in regard to new aggressions on the part of the whalers gave rise to further correspondence. Some time before, in June 1846, the Governor-General of Eastern Siberia had expressed his opinion that, in order to limit the whaling operations of foreigners, it would be fair to forbid them to come within 40 Italian miles of our shores, the ports of Petropavlovsk and Okhotsk to be excluded, and a payment of 100 silver roubles to be demanded at those ports from every vessel for the right of whaling. He recommended that a ship of war should be employed as a cruiser to watch foreign vessels. The Foreign Office expressly stated as follows, in reply :—

Russian Foreign Office as to maritime jurisdiction.

" 'We have no right to exclude foreign ships from that part of the great ocean which separates the eastern shore of Siberia from the north-western shore of America, or to make the payment of a sum of money a condition to allowing them to take whales.'

" The Foreign Office were of opinion that the fixing of the line referred to above would reopen the discussions formerly carried on between England and France on the subject. The limit of a cannon-shot, that is, about 3 Italian miles, would alone give rise to no dispute. The





Foreign Office observed, in conclusion, that no Power had yet succeeded in limiting the freedom of fishing in open seas, and that such pretensions had never been recognized by the other Powers. They were confident that the fitting out of colonial cruizers would put an end to all difficulties; there had not yet been time to test the efficacy of this measure."

1847. Traffic in fur-seal skins was carried on *Tikhmenieff.*
by an American whaler at Behring Island in
open defiance of the Russian authorities.

1848. Whaling vessels entered the Arctic
Ocean by way of Behring Straits for the first
time.

1849. The American whaling fleet in the *Alaska*, p. 584.
Arctic and northern part of the North Pacific
numbered 299 vessels. Two-thirds of these are
said to have been American vessels, but others
were French and English, the latter chiefly from
Australia. A Russian Whaling Company for the
North Pacific was formed at Abo, in Finland,
with special privileges. This Company sent out
six vessels in all.

1850. The British vessels "Herald," "Plover," *Ibid.*, p. 572.
and "Investigator," all dispatched in search of
Franklin, met in Kotzebue Sound.

An armed Russian corvette ordered to cruise *Ibid.*, p. 584.
in the Pacific. In this year it is estimated that
360, and in later years as many as 500 foreign
whalers visited the Arctic and neighbouring
waters.

Close of Tebenkof's administration. *Ibid.*, p. 585.
1851. Mulatto, a fort in the Yukon, some *Ibid.*, p. 572.
way inland, was surprised by Indians and the
inmates butchered, including Barnard, an English
officer of the Franklin search. The American *Ibid.*, p. 584.
whaling fleet is said to have been as numerous as
in 1849.

The interval between the close of Tebenkof's *Ibid.*, p. 586.
administration and the beginning of that of
Voievodsky's was filled by the temporary appoint-
ment of Rosenburg and Rudakof.

1852. Buildings at the Hot Springs, near *Ibid.*, p. 574.
Sitka, destroyed by the Indians.

The value of catch of the whaling fleet in *Ibid.*, p. 669.
the North Pacific in this year is estimated at
14,000,000 dollars. After 1852 the whaling
industry gradually decreased.

1853. War having been determined on between *Ibid.*, p. 672.
England and Russia, the Hudson's Bay and
Russian-American Companies influenced their
respective Governments to prohibit hostilities on

the north-west coast of America. An American bark is incidentally mentioned as being at anchor in Sitka Harbour.

Tikhmenieff.

Alaska, p. 584.

Ibid., p. 585.

Ibid., 575.

Ibid., p. 585.

Ibid., p. 584.

Ibid., p. 668.

In 1853 the Russian-American Company again specially requested the Government to prohibit whalers from entering Okhotsk Sea, but without success. Instructions were, however, issued to Russian cruisers to prevent whalers from entering bays or gulfs, or from coming within 3 Italian miles of the shores.

1854. Petropovlowski, in Kamtschatka, bombarded and unsuccessfully attacked by the English and French.

525 whalers in Behring Sea and vicinity.

Voievodsky elected Governor for the Company.

1855. Petropovlowski taken by the English and French, and partially destroyed. Audreief Station, south of Sitka, destroyed by the Indians, and two men killed. An attack was also made on Sitka itself, which failed.

The Åbo Whaling Company went into liquidation.

1856. In this year 366 whalers were reported as in Behring Sea and vicinity.

1857. "Of the 600 or 700 American whalers that were fitted out in 1857, at least one-half, including most of the larger vessels, were engaged in the North Pacific . . . including, of course, Behring Sea."

In 1867, before the cession of Alaska, the whaling interest of the United States had grown to such an extent on these seas that a Philadelphia paper thus referred to them:—

"Philadelphia North American Gazette," Friday, April 12, 1867.
Ex. Doc. No. 157,
180, 2nd Sess.,
40th Cong.

Hon. Charles Sumner on the cession of Alaska,
p. .

Ibid., p. 195.

Ibid., p. 173.

"Our whaling interests are now heaviest in the seas adjacent to Russian-America, both above and below Behring Strait."

Between 1854 and 1867 Californian fishermen searched the waters about the Aleutians and the Shumagins, commencing a promising fishery.

From 1849 to 1867 Captain Bryant, of the United States, was engaged in the whale fishery in these seas, east and west of the Aleutian Islands.

Some time previous to 1867, Mr. Sumner states whalers and casual ships were in the habit of dealing with the Esquimaux on both sides of the continent north of the United States.

Captain Long, in the United States' whaler "Nile," long before 1867, had sailed through Behring Sea and had hunted in those waters.

"Lipincott's Magazine," February 1, 1868.
Ex. Doc., Nos. 167,
180, 2nd Sess.,
40th Cong., p. 114.

From 1850 to 1867 Manuel Enos, Captain of the United States' barque "Java," was whaling in the bays of the Sea of Okhotsk, and was not molested.

The "Java."
Seward to Clay,
February 24, 1868,
No. 55, American
Correspondence,
1867.

1859. The cession of Alaska to the United States began to be discussed privately.

1860. The Russian-American Company applied for a new Charter for twenty years, to date from the 1st January, 1862. When the current Charter expired, Reports as to the condition of the Company were called for by the Government.

The Russian population of the American Colonies at this date, apparently including native owners, numbered 784: Creoles, 1,700; native population estimated at over 7,000.

1862. Value of catch of North Pacific whaling fleet estimated at 800,000 dollars.

1864. Maksatof took temporary charge for the Russian Government of the Company's affairs.

1865. Negotiations between the Russian Company and the Government continued, but terms such as the Company would accept could not be arrived at.

1866. The Russian Government still contemplated renewing the Company's Charter on certain terms.

A Californian Company entered into treaty for lease of "coast strip" of Alaska, then held by the Hudson Bay Company.

1867. Alaska sold by Russia to the United States for 9,200,000 dollars.

In this year twenty-three vessels were employed in the cod fishery, and 2,500 tons of salted fish secured.

Value of catch of North Pacific whaling fleet estimated at 3,200,000 dollars.

1868. The lease of the "coast strip" of Alaska to the Hudson's Bay Company by the Russian-American Company expired in this year.

CHAPTER IV.

POINTS I AND II.—*User of Waters in question from 1867 to 1886.*

In 1867 the cession of Alaska took place.

Neither the Debates in Congress—which preceded and resulted in the cession and its ratification by the House. . . nor the Treaty by which it was carried into effect, nor the subsequent legislation by the United States, indicate the transfer or acquisition of any exclusive or extraordinary rights in Behring Sea.

On the contrary, they show that no such ^{idea} claim was then contemplated: ~~conceived~~—

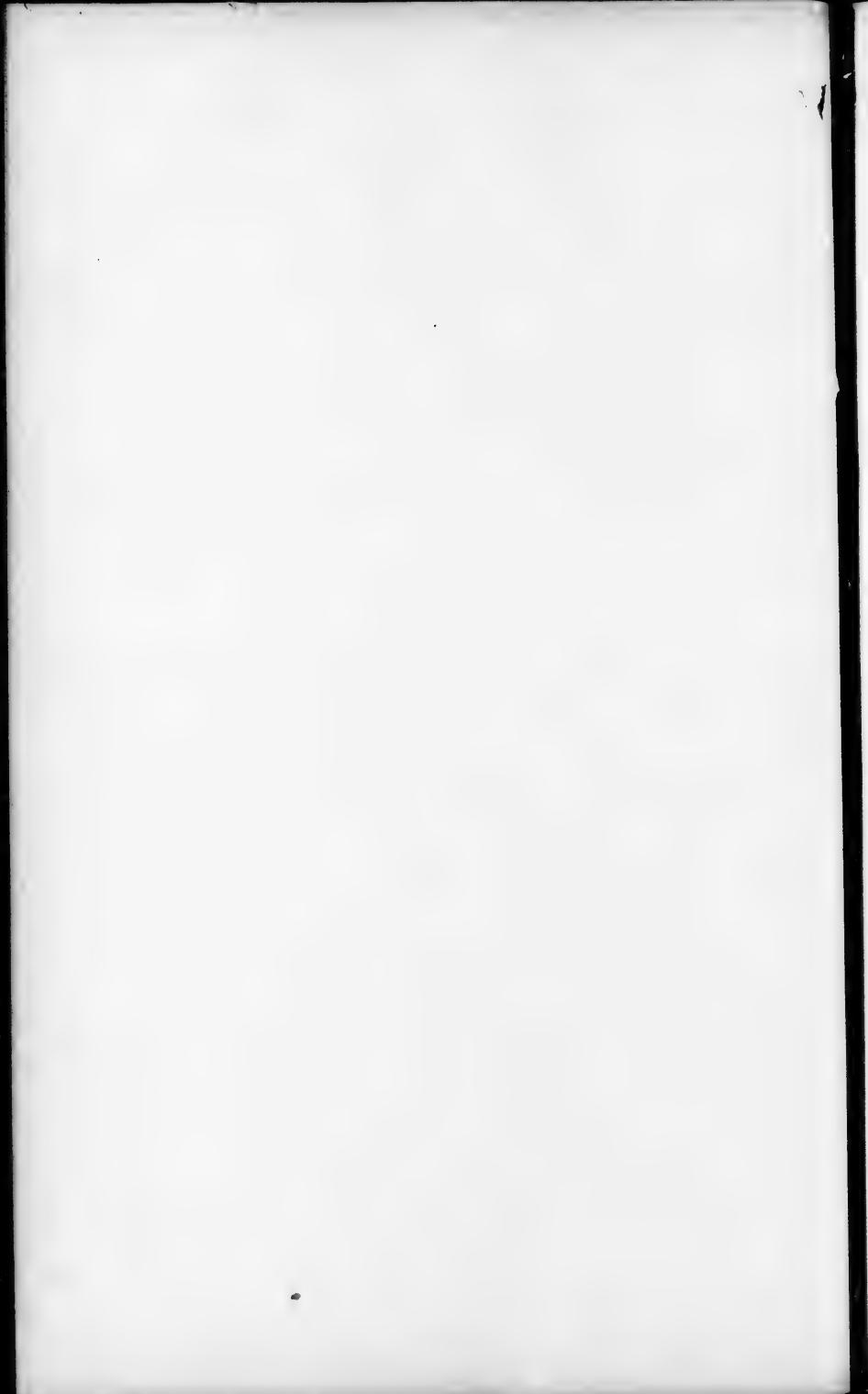
In answer to a Resolution of the House of Representatives of the 19th December, 1867, calling for all correspondence and information in the possession of the Executive in regard to the country proposed to be ceded by the Treaty, the Memorial of the Legislature of Washington Territory, which was made the occasion for the negotiation, together with Mr. Sumner's speech in the Senate, were among other documents transmitted.

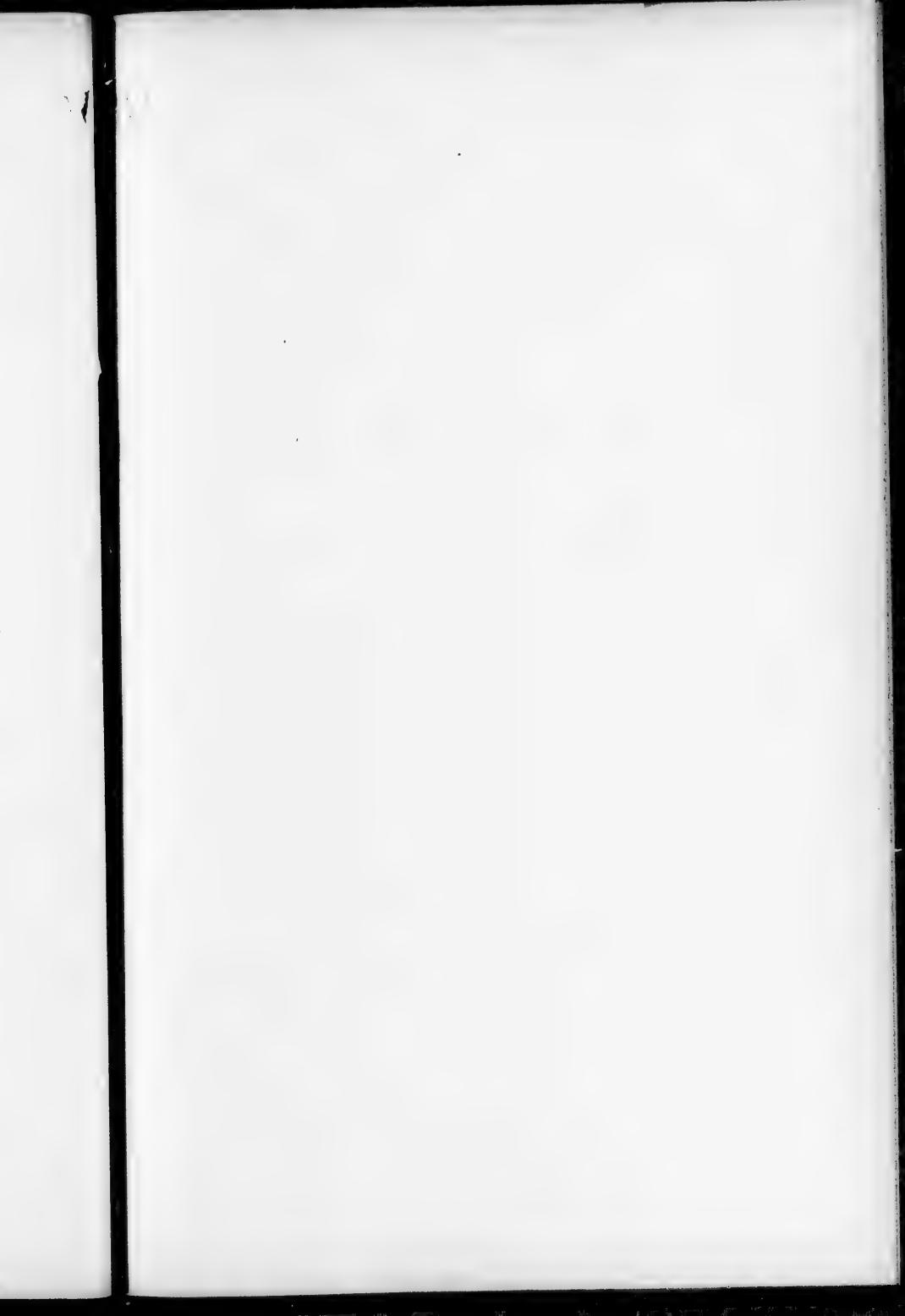
1/1/1/
apprehension
5/
 This Memorial shows that the United States' citizens were already engaged in fishing from Cortez Bank to Behring Strait, and that they had no thought of any exclusion from the open sea by Russia, but desired to secure coast facilities, especially for the purposes of curing fish and repairing vessels.

It is as follows:—

"To his Excellency Andrew Johnson, President of the United States.

" Your memorialists, the Legislative Assembly of Washington Territory, beg leave to show that abundance of cod-fish, halibut, and salmon, of excellent quality, have been found along the shores of the Russian possessions. Your memorialists respectfully request your Excellency to obtain such rights and privileges of the Government of Russia as will enable our fishing-vessels to visit the ports and harbours of its possessions to the end that fuel, water, and provisions may be easily obtained; that our sick and disabled fishermen may obtain sanitary assistance, together with the privilege of curing fish and repairing vessels in need of repairs. Your memorialists further request that the Treasury Department be instructed to forward to the Collector of Customs of this Puget Sound district such fishing licences, abstract-journals, and log-books as will





enable our hardy fishermen to obtain the bounties now provided and paid to the fishermen in the Atlantic States. Your memorialists finally pray your Excellency to employ such ships as may be spared from the Pacific naval fleet in exploring and surveying the fishing banks known to navigators to exist along the Pacific Coast from the Cortez Bank to Behring Straits.

* And as in duty bound your petitioners will ever pray.

(Signed) "EDWARD ELDRIDGE, Speaker,
"House of Representatives.
"HARVEY K. HINES, President
"of the Council."

note
exclusive property
of the coast

It is of interest to read further the Report of the discussion which took place in Congress upon the value of the proposed purchase and the nature of the interests and property.

The debate was protracted, and many leading Members spoke at length. To none of them did it occur that a special property in seals was involved, and no one suggested the existence of an exclusive jurisdiction over ~~coastal~~ waters distant more than 3 miles from land.

On the contrary, Mr. Sumner, who had charge of the measure in the Senate, after pointing out that the seals were to be found on the "rocks and recesses" of the territory to be acquired, which would therefore make the acquisition more valuable, in touching upon the fisheries and marine animals found at sea, he admitted that they were free to the world, contending, however, that the possession of the coast gave advantages to the United States' fishermen for the outfitting of their vessels and the curing of their catch.

His remarks, as reported, were:—

"The narwhal (a sperm whale) with his two long tusks of ivory, out of which was made the famous throne of the early Danish Kings, belongs to the Frozen Ocean; but he, too, strays into the Straits below. As no sea is now *mare clausum*, all these (whales) may be pursued by a ship under any flag except directly on the coast and within its territorial limit. And yet it seems as if the possession of this coast as a commercial base must necessarily give to its people peculiar advantages in this pursuit."

Mr. Washburn, of Wisconsin, said:—

"But, Sir, there has never been a day since Vitus Behring sighted that coast until the present when the people of all nations have not been allowed to fish there, "United States' Congressional Debates, from "Congressional Globe," December 11, 1867, Part I, p. 138, 40th Cong., 2nd Sess., where they have only from forty-five to sixty pleasant days in the whole year. England, whose relations with Russia are far less friendly than ours, has a Treaty with

that Government by which British subjects are allowed to fish and cure fish on that coast. Nay, more, she has a Treaty giving her subjects for ever the free navigation of the rivers of Russian America, and making Sitka a free port to the commerce of Great Britain."

United States' Congressional Debates, from "Congressional Globe," July 1, 1868, Part IV, p. 3667, 40th Cong., 2nd Sess.

In 1868 Mr. Ferriss spoke as follows:—

"That extensive fishing banks exist in these northern seas is quite certain; but what exclusive title do we get to them? They are said to be far out at sea, and nowhere within 3 marine leagues of the islands or main shore."

Mr. Peters, during the course of his speech, remarked:—

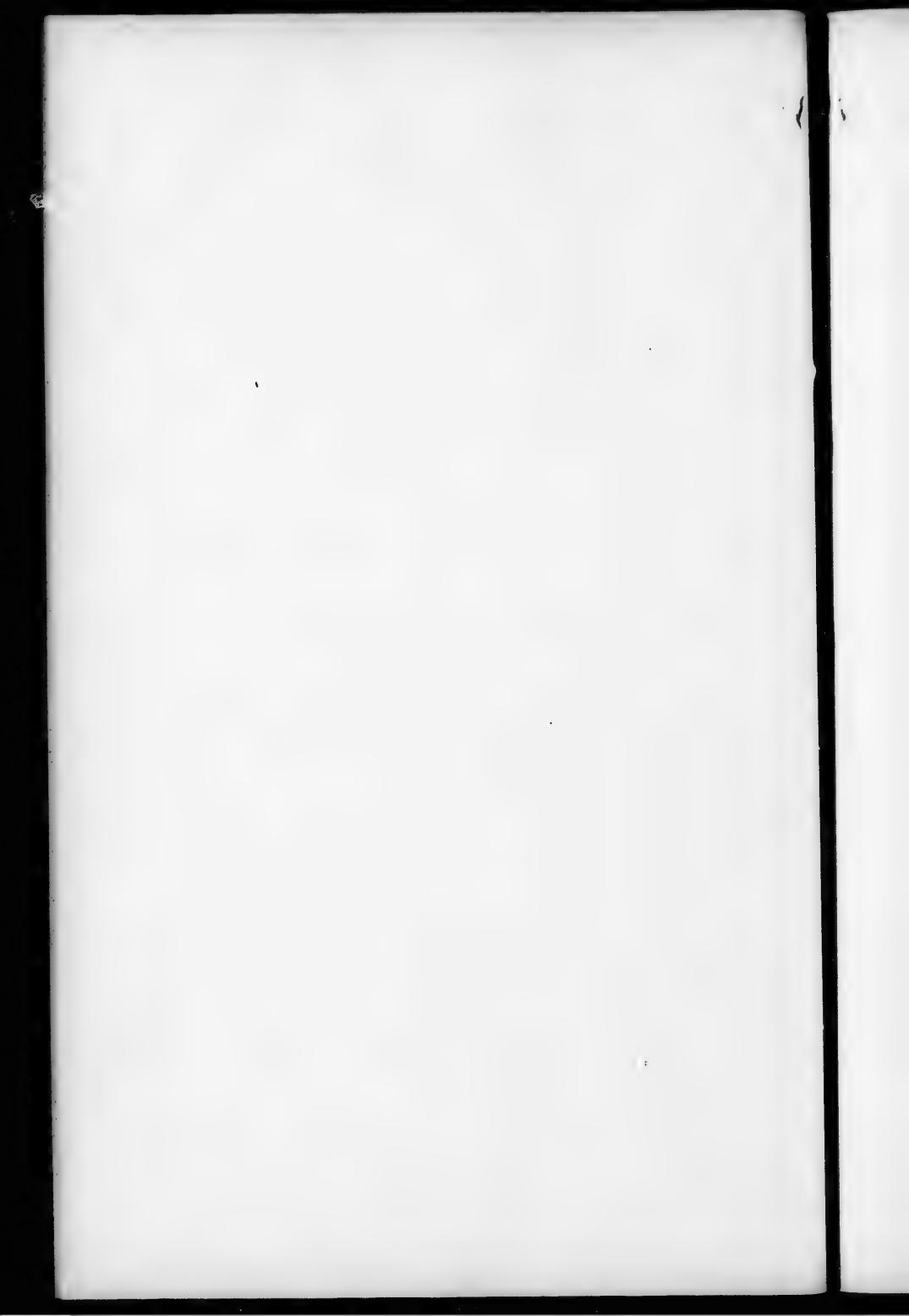
"I believe that all the evidence upon the subject proves the proposition of Alaska's worthlessness to be true. Of course, I would not deny that her cod fisheries, if she has them, would be somewhat valuable; but it seems doubtful if fish can find sun enough to be cured on her shores, and if even that is so, my friend from Wisconsin (Mr. Washburn) shows pretty conclusively that in existing Treaties we had that right already."

Mr. Williams, in speaking of the value of the fishes, said:—

United States' Congressional Debates, from Appendix to "Congressional Globe," July 9, 1868, Part V, 2nd Sess., 40th Cong., p. 490.

See also Bancroft's Alaska, p. 670.

"And now as to the fishes, which may be called, I suppose, the *argumentum piscatorium*. . . . or is it the larger tenants of the ocean, the more gigantic game, from the whale, the seal, and walrus, down to the halibut and cod, of which it is intended to open pursuit to the adventurous fishermen of the Atlantic coast, who are there already in a domain that is free to all? My venerable colleague (Mr. Stevens), who discourses as though he were a true brother of the angle himself, finds the foundations of this great Republic like those of Venice or Genoa among the fishermen. Beautiful as it shows above, like the fabled mermaid—'*desimit in pisces mulier formosa superne*', it ends, according to him, as does the Alaska argument itself, in nothing but a fish at last. But the resources of the Atlantic are now, he says, exhausted. The Falkland Islands are now only a resting place in our maritime career, and American liberty can no longer live except by giving to its founders a wider range upon a vaster sea. Think of it, he exclaims—I do not quote his precise language—what a burning shame, is it not, to us that we have not a spot of earth in all that watery domain on which to refit a mast or sail, or dry a net or fish?—forgetting, all the while, that we have the range of those seas without the leave of anybody; that the privilege of landing anywhere was just as readily attainable, if wanted, as that of hunting on the territory by the British; and, above all, that according to the official Report of Captain Howard, no fishing bank has been discovered within the Russian latitudes."





On the 27th July, 1868, an Act passed the Legislation in the United States, Congress of the United States,* entitled "An Act to extend the Laws of the United States relating to Customs and Navigation over the territory ceded to the United States by Russia, to establish a Collection District therein, and for other purposes."

On the 3rd March, 1868, an Act was passed (section 1959), reserving for Government purposes the Islands of St. Paul and St. George, and forbidding any one to land or remain there without permission of the Secretary of the Treasury.

The

The following sections from the United States' Revised Statutes contain the following provisions which were enacted on the 1st July, 1870:—

"United States' Revised Statutes.

"Section 1954. The laws of the United States relating to customs, commerce, and navigation are extended to and over all the mainland, islands, and waters of the territory ceded to the United States by the Emperor of Russia by Treaty concluded at Washington on the 30th day of March, A.D. 1867, so far as the same may be applicable thereto.

"Section 1956. No person shall kill any otter, mink, marten, sable, or fur-seal, or other fur-bearing animal within the limits of Alaska territory, or in the waters thereof . . .

"Section 1957. . . . The collector and deputy collector appointed for Alaska territory, and any person authorized in writing by either of them, or by the Secretary of the Treasury, shall have power to arrest persons and seize vessels and merchandise liable to fines, penalties, or forfeitures under this and the other laws extended over the territory. . . .

On this date also was approved "An Act to prevent the Extermination of Fur-bearing Animals in Alaska."

Under this Act a lease was executed the 3rd August, 1870, on behalf of the United States' Government in favour of the Alaska Commercial Company.

It covered the Islands of St. George and St. Paul only.

The seal fisheries did not constitute a great consideration at the date of the cession of Alaska.

For the Act to prevent extermination of fur-bearing animals in Alaska, see Appendix.
For lease from United States to Alaska Commercial Company, August 3, 1870, see Appendix.

*8. 1870
were scarcely
at all.*

* Now chapter iii of Title XXIII of the Revised Statutes, secs. 1954-1986.

44th Congress,
In Sess., Report
No. 623.

No importance attached to seal fisheries at time
of cession of Alaska.

The Committee of Ways and Means of the
House of Representatives in 1876 reported, after
taking testimony, that—

"When the proposition to purchase the Alaska territory
from Russia was before Congress, the opposition to it was
very much based on alleged barrenness and worthlessness
of the territory to be acquired. It was supposed that
though there might be many political reasons for this
addition to the American Pacific possessions, there were
not commercial or revenue advantages. The value of those
seal islands was not considered at all. Russia had derived
but little revenue from them, indeed a sum not sufficient
to pay the contingent expenses of maintaining the official
authority."

*After the day of
the acquisition of the
Alaskan territories
the United States became
entitled to the
seal fisheries
in view of the seal legislation
of the above mentioned
and the
presented. —*

Mr. Boutwell, as already stated, was Secretary
of the United States' Treasury when the legisla-
tion of Congress was adopted for the organization
of the Alaskan territories and the government
and leasing of the seal islands.

The following correspondence shows the position
assumed in 1872 by the Treasury Depart-
ment in relation to the extent of jurisdiction of
the United States in Alaska waters:—

"Mr. Phelps to Mr. Boutwell.

"Customs House, San Francisco,

"Sir, " Collector's Office, March 25, 1872.

"I deem it proper to call the attention of the Depart-
ment to certain rumours which appear to be well
authenticated, the substance of which appears in the
printed slip taken from the 'Daily Chronicle' of this date,
herewith inclosed.

"In addition to the several schemes mentioned in this
paper, information has come to this office of another
which is being organized at the Hawaiian Islands for the
same purpose. It is well known that, during the month
of May and the early part of June in each year, the
fur-seal in their migration from the southward to
St. Paul and St. George Islands, uniformly move through
Ounimak Pass in large numbers, and also through the
narrow straits near that pass which separate several small
islands from the Aleutian group.

"The object of these several expeditions is unquestion-
ably to intercept the fur-seals at these narrow passages
during the period above mentioned, and there, by means
of small boats manned by skilful Indians or Aleutian
hunters, make indiscriminate slaughter of those animals
in the water, after the manner of hunting sea-otters.

"The evil to be apprehended from such proceedings is
not so much in respect of the loss resulting from the
destruction of the seals at those places (although the
killing of each female is in effect the destruction of two

278



seals), but the danger lies in diverting these animals from their accustomed course to the Islands of St. Paul and St. George, their only haunts in the United States.

"It is believed by those who have made the peculiar nature and habits of these animals a study, that if they are by any means seriously diverted from the line upon which they have been accustomed to move northward in their passage to these islands, there is great danger of their seeking other haunts, and should this occur the natural selection would be Komandorski Islands, which lie just opposite the Pribyloff group, near the coast of Kamtschatka, owned by Russia, and are now the haunts of fur-seals.

"That the successful prosecution of the above-mentioned schemes would have the effect to drive the seals from their accustomed course there can be no doubt. Considering, therefore, alone the danger which is here threatened to the interest of the Government in the seal fisheries, and the large annual revenue derived from the same, I have the honour to suggest, for the consideration of the Honourable Secretary of the Treasury, the question whether the Act of the 1st July, 1870, relating to those fisheries, does not authorize his interference by means of revenue cutters to prevent foreigners and others from doing such an irreparable mischief to this valuable interest. Should the Honourable Secretary deem it expedient to send a cutter into these waters, I would respectfully suggest that a steam-cutter would be able to render the most efficient service, and that it should be in the region of Unimak Pass and St. Paul and St. George Islands by the 15th of next May.

"I am, &c.

(Signed) "T. G. PHELPS, Collector.

"Extract from San Francisco 'Daily Chronicle,'
March 21, 1872.

"It is stated in reliable commercial circles that parties in Australia are preparing to fit out an expedition for the capture of fur-seals in Behring Sea. The present high prices of fur-seal furs in London and the European markets has acted powerfully in stimulating enterprises of a like character. But a few days ago we mentioned that a Victorian Company was organized for catching fur-seals in the North Pacific. Another party—an agent representing some Eastern capitalists—has been in this city for the past week making inquiries as to the feasibility of organizing an expedition for like purposes.

"Mr. Boutwell to Mr. Phelps.

"Treasury Department, Washington, D.C.,

*Sir, "April 19, 1872.

"Your letter of the 25th ultimo was duly received, calling the attention of the Department to certain rumours circulating in San Francisco, to the effect that expeditions

are to start from Australia and the Hawaiian Islands to take fur-seals on their annual migration to the Islands of St. Paul and St. George through the narrow Pass of Ounimak. You recommend—to cut off the possibility of evil resulting to the interests of the United States from these expeditions—that a revenue cutter be sent to the region of Ounimak Pass by the 15th May next.

"A very full conversation was had with Captain Bryant upon this subject while he was at the Department, and he conceived it to be entirely impracticable to make such an expedition a paying one, inasmuch as the seals go singly or in pairs, and not in droves, and cover a large region of water in their homeward travel to these islands, and he did not seem to fear that the seals would be driven from their accustomed resorts, even were such attempts made.

"In addition, I do not see that the United States would have the jurisdiction or power to drive off parties going up there for that purpose, unless they made such attempt within a marine league of the shore.

"As at present advised, I do not think it expedient to carry out your suggestions, but I will thank you to communicate to the Department any further facts or information you may be able to gather upon the subject.

"I am, &c.

(Signed) "GEORGE S. BOUTWELL,

Secretary.

*having arisen in
the course of
her work*

So in 1875, a question arising as to Russia's authority to grant licences for the use of her ~~coast~~ ^{territorial} seas, Mr. Fish, Secretary of State for the United States of America, gives conclusive evidence as to the interpretation placed upon the Convention of 1824 by the United States, ~~and~~ as follows:

"There was reason to hope that the practice which formerly prevailed with powerful nations of regarding seas and bays, usually of large extent, near their coast, as closed to any foreign commerce or fishery not specially licensed by them, was, without exception, a pretension of the past, and that no nation would claim exemption from the general rule of public law which limits its maritime jurisdiction to a marine league from its coast. We should particularly regret if Russia should insist on any such pretension."

Non-assertion of exclusive authority over Behring Sea by United States.

H. R., Ex. Doc.
No. 35, 44th Cong.,
1st Sess.

Notwithstanding, however, the absence of a general knowledge and appreciation of the value of the rookeries and seal fisheries in 1867 referred to above, it is found that from 1867 down to and including 1885, vessels continued to visit and hunt in Behring Sea without interference when outside of the ordinary territorial jurisdiction.

Schooners from British Columbia were fishing for cod in 1866, and seals to the number of 20,000 a-year were reported as being taken south



of St. George and St. Paul Islands in 1870 and 1872.

In 1872 expeditions for Behring Sea were reported to have fitted out in Australia and British Columbia. *be fitting*

In 1875 a steamer was seen hunting among the seal islands. H. R., Ex. Doc. No. 83, p. 125, 44th Cong., 1st

Ivan Petroff, Special Commissioner of the United States to the seal islands in the year 1880, says in his Report:—

"As these seals pass up and down the coast as far as the Straits of Fuca and the mouth of Columbia River, quite a number of them are secured by hunters, who shoot or spear them as they find them asleep at sea. Also, small vessels are fitted out in San Francisco, which regularly cruise in these waters for the purpose alone of shooting sleeping seal."

Sealing-vessels and their catches were reported by the United States' cutter "Corwin," but none were interfered with when outside of the 3-mile limit. H. R., Ex. Doc. No. 153, 49th Cong., 1st Sess.

An Agent of the United States' Government reported in 1881 that 100 vessels had been sealing about the Pribyloff Islands for twenty years. H. R., Ex. Doc. No. 3883, 49th Cong., p. 73.

The Agents of the United States' Government sent to the seal islands previous to 1886 continually reported upon the inadequacy of the protection of the islands. *and*

They frequently referred to depredations upon the rookeries.

From every source it appears that, during the years 1867-86, notwithstanding the presence of seal-hunting craft in Behring Sea, the United States' authorities confined the exercise of jurisdiction to the mainland, to the islands, and to the ordinary territorial limits thereof.

Mr. Boutwell *was Secretary of the United States' Treasury in the year the Act for the leasing and organization of the seal islands was passed.* *as Secretary of the Treasury*

The Report preceded the Act of the 1st July, 1870. 41st Cong., 2nd Sess., Ex. Doc. No. 109.

This Report discloses no suggestion of authority at a greater distance than 3 miles from the shore-line.

With the knowledge of the raids upon the islands and the existence of seal-hunting schooners, Mr. Boutwell dwelt upon the means of protecting the seal islands only.

*was included in the
ordinary*

Mis. Doc., 50th
Cong., 1st Sess.,
H. R., No. 602,
p. 26.

*Who might
have K. in mind*

In the orders given to Lieutenant I. E. Lutz by the Captain of the United States' revenue marine steamer "Corwin," 22nd May, 1884, care is taken to confine any interference with seal-hunters to such as attempt a landing on the seal islands.

Acting under these instructions, Lieutenant Lutz arrested the "Adele," of Hamburg, Gustave Isaacson, master, with three officers and a crew of eighteen Japanese, when a mile from shore. The Lieutenant was careful to ascertain that the vessel was engaged in sealing ashore, and having waited the return of the ship's boat which came back loaded with seal carcasses, Lieutenant Lutz reports:—

"Having now secured all necessary evidence, I notified the captain of the seizure of the vessel."

The following instructions from the Treasury Department show that the administration confined the interference of their officers to those seal-hunters only who attempted landing upon the islands:—

44th Cong., 1st
Sess., Ex. Doc.,
No. 83, p. 30.

*"Treasury Department,
"September 10, 1870.*

"The following Executive Order, relating to the importation of arms into the Islands of St. Paul and St. George, within the district of Alaska, is published for the information of officers of the Customs:—

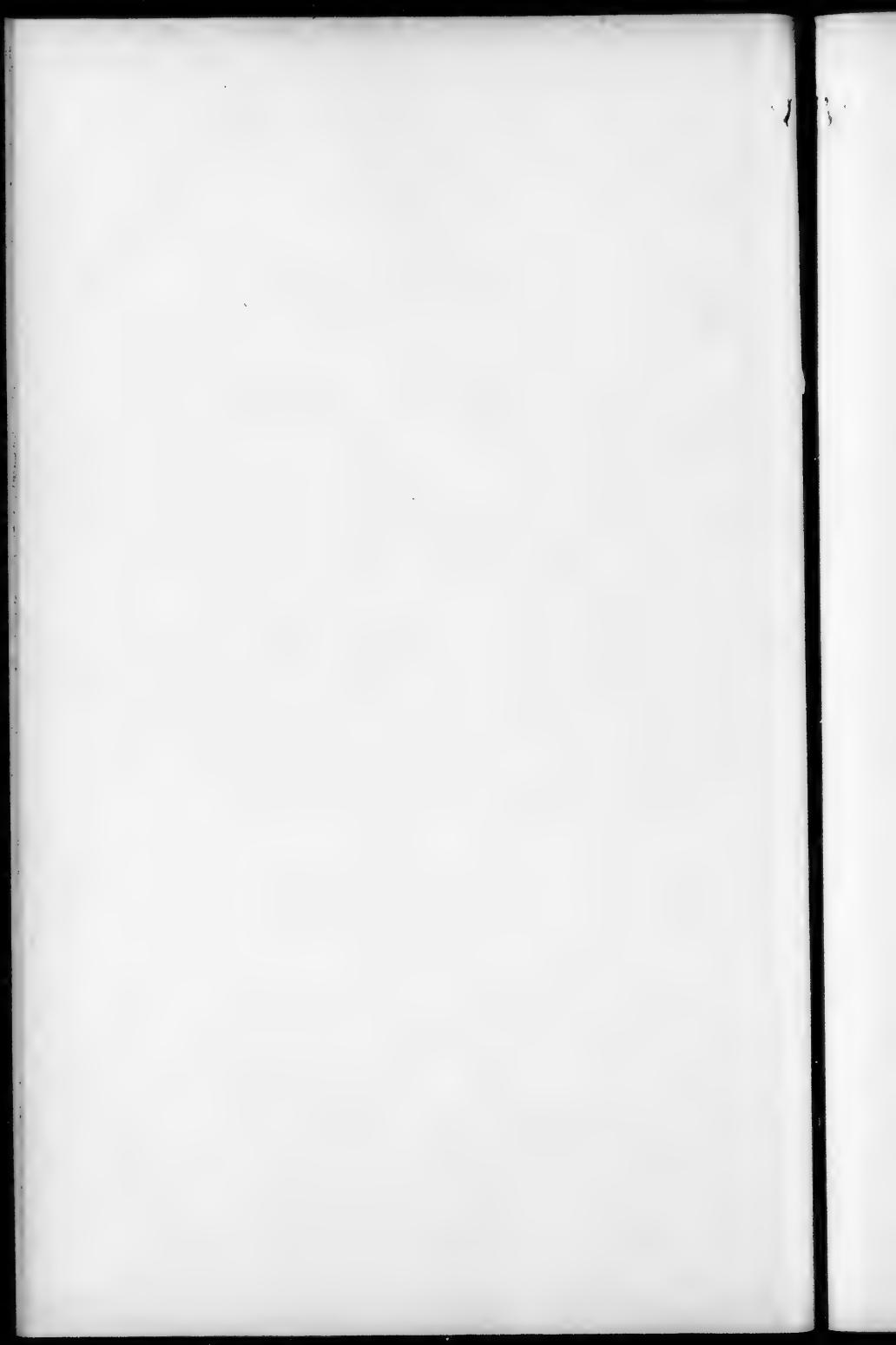
*"Executive Mansions, Washington, D.C.,
"September 9, 1870.*

"So much of Executive Order of the 4th February, 1870, as prohibits the importation and use of fire-arms and ammunition into and within the Islands of St. Paul and St. George, Alaska, is hereby modified so as to permit the Alaska Commercial Company to take a limited quantity of fire-arms and ammunition to said islands, subject to the direction of the revenue officers there and such regulations as the Secretary of the Treasury may prescribe.

"U. S. GRANT, President.

"The instructions issued by this Department in its Circular of the 8th February, 1870, are accordingly modified so as to adjust them to the above Order.

"Revenue officers will, however, see that the privilege granted to the said Company is not abused; that no fire-arms of any kind are ever used by said Company in the killing of seals or other fur-bearing animals, on or near said islands, or near the haunts of seals or sea-otters in the district, nor for any purpose whatever, during the months of June, July, August, September, and October of each year, nor after the arrival of seals in the spring or before



their departure in the fall, excepting for necessary protection and defence against marauders or public enemies who may unlawfully attempt to land upon the islands. In all other respects, the instructions of the 8th February, 1870, will remain in force.

"WM. A. RICHARDSON,
"Acting Secretary."

"Treasury Department, Washington, D.C.,

"Sir, September 19, 1870.

"I inclose herewith a copy of a letter, dated the 17th instant, from N. L. Jeffries, attorney for the Alaska Commercial Company, reciting that a Notice recently appeared in the 'Alta California' newspaper, published in your city, of the intended sailing of the schooner 'Mary Zephyr' for the Islands of St. Paul and St. George.

44th Cong.,
1st Sess., Ex. Doc.,
No. 88, pp. 32-34.

"By the 4th Section of the Act of the 1st July, 1870, entitled 'An Act to prevent the Extermination of Fur-bearing Animals in Alaska,' it is provided that the Secretary of the Treasury, immediately after the passage of said Act, shall lease to proper and responsible parties, &c., &c., the right to engage in the business of taking fur-seals on the Islands of St. Paul and St. George, and to send a vessel or vessels to said islands for the skins of such seals, &c.

"This lease has been awarded to the Company above named for the term of twenty years, a copy of which is herewith inclosed; and the request of General Jeffries that an official announcement be made of the award of said lease, and that no vessels except those of the Government and of said Company will be allowed to touch or land at either of said islands, may be complied with, and you will please cause such Notice to be published in one or more of the San Francisco newspapers, at the expense of said Company.

"I am, &c.,
(Signed) "WM. A. RICHARDSON,
"Acting Secretary.

"T. G. Phelps, Esq.,
"Collector of Customs,
"San Francisco, California.

"Custom-house, San Francisco, California,

"Sir, Collector's Office, September 30, 1870.

"I have the honour to acknowledge the receipt of your letter of the 19th instant, relative to the published Notice of the sailing of the schooner "Mary Zephyr" for the Islands of St. Paul and St. George, in Alaska. On seeing the advertisement in the "Alta," written Notice was immediately sent to the parties interested, that no vessel would be permitted to land at said islands. I have caused

a Notice, as suggested by the honourable Secretary, to be published. Please find a copy of the Notice inclosed.

"I am, &c.,

(Signed) "T. G. PHELPS,

"Collector.

"Honourable Geo. S. Boutwell,
"Secretary Treasury.

"*Notice.*

"In compliance with an order of the honourable Secretary of the Treasury, notice is hereby given that a lease of the Islands of St. Paul and St. George, in the Territory of Alaska, has been executed by the Secretary of the Treasury to the Alaska Commercial Company for the period of twenty years from the 1st day of May, 1870, in accordance with the provisions of an Act of Congress entitled 'An Act to prevent the Extermination of Fur-bearing Animals in Alaska,' approved the 1st July, 1870, and that, by the terms of said lease and the above-mentioned Act, the said Company have the exclusive right to engage in the business of taking fur-seals on said islands and the islands adjacent thereto. No vessels, other than those belonging to said Alaska Commercial Company or to the United States, will be permitted to touch or land at either of said islands or the islands adjacent thereto, nor will any person be allowed thereon except the authorized agents of the United States and of said Company.

(Signed) "T. G. PHELPS,
"Collector of Customs.

"Custom-house, San Francisco, California,
"Collector's Office, September 28, 1870."

Mr. McIntyre was the Treasury Agent at the Pribiloff Islands in 1875.

was entitled to
He then gave it as his opinion that, in protecting the islands, he could repel by force "any attempt to kill seals in the rookeries or within a rifle shot of the shore."

Ivan Petroff, the Special Agent of the United States' Government, in 1880, in his Report on the seal islands, remarked:—

"The fur trade of this country, with the exception of that confined to the seal islands and set apart by law, is free to all legitimate enterprise."

Instructions to Russian cruisers.
Whalers began to turn their attention to the Sea of Okhotsk.

The main objection to these whalers was because of their interference with the fur industry, yet the instructions to Russian cruisers only prohibit these vessels from coming "within





3 Italian miles of our shores, that is, the shores of Russian America (north of 54° 41'), the Peninsula of Kamtchatka, Siberia, the Kadjak Archipelago, the Aleutian Islands, the Pribyloff and Commander Islands, and the others in Behring Sea."

*For extract from
"Tikhmenieff,"
see Appendix.*

The Sea of Okhotsk is within the terms of the The Sea of Okhotsk and the 3-mile limit. Ukase of 1821, and possesses a seal rookery (Robben Island).

An examination of the Map will show that the Sea of Okhotsk has many more characteristics of an inclosed inland sea than the Bering Sea.

It is almost surrounded by Russian territory.

The mouth of this sea is barred by a string of islands and reefs, ~~none of them being as far apart as Attu and Copper Island in Behring Sea.~~

The United States' Minister, Mr. Hoffman, writing in 1882, thus refers to it:—

"A glance at the Map will show that the Kurile Islands are dotted across the entrance to the Sea of Okhotsk the entire distance from Japan on the south of the southernmost Cape of Kamtchatka on the north.

"In the time when Russia owned the whole of these islands, her Representatives in Siberia claimed that the Sea of Okhotsk was a *mare clausum*, for that Russian jurisdiction extended from island to island and over 2 marine leagues of intermediate sea from Japan to Kamtchatka.

"But about five years ago Russia ceded the southern group of these islands to Japan, in return for the half of the Island of Saghalin, which belonged to that Power.

"As soon as this was done it became impossible for the Siberian authorities to maintain their claim. My informant was not aware that this claim had ever been seriously made at St. Petersburg."

And in another letter he says:—

"I do not think that Russia claims that the Sea of Okhotsk is a *mare clausum*, over which she has exclusive jurisdiction. If she does, her claim is not a tenable one since the cession of part of the group of the Kurile Islands to Japan, if it ever were tenable at any time."

The following introductory statement appears in "Papers relating to Behring Sea Fisheries," published at the Government Printing Office in Washington, 1887:—

"This sea is a part of the waters to which the Ukase of 1821 applied, and which M. Poletica, in his subsequent correspondence with Mr. Adams, prior to the Treaty of 1824, said His Imperial Majesty, the Emperor of all the Russias, might have claimed as a close sea had he chosen

July 27. 1892

Dear Mr. Tupper,

The enclosed copy of the
affidavit is, I fear, in rather
imperfect condition so far
as regards the first 50 odd
pages - But in order to get it
to you tonight we have
allowed the printer to send
up so. These pages have
been corrected by the Attorney

It has been seen, all question as to the right of
the United States, as well as of the subjects of
Russia once for all in the Treaty of 1824 with
Russia, and of 1825 with Great Britain.
The correspondence between Russia and the
United States in the years 1867 and 1868 contains an
avowal by Russia of any claim to interfere with
operations of citizens of the United States in
Okhotsk."

The correspondence referred to shows that the
American whaler "Europa," a United States' vessel,
complained to the Department of State at Washington that the Captain of a Russian
whaler had stated that he was authorized
by the American Government to drive United States' whalers away from the
shore near Okhotsk city, in the
Okhotsk, and that he had fired on the
bark "Endeavour" of New Bedford
and asked the Russian Government for instructions relating to the fisheries of this

It is also shown that on the 27th July, 1867,
the American bark "Java" was cruising for
Shantar Bay and standing towards
Ird's Bluff, when a Russian Commander
came out of the bay. An official
explanation from M. de
Pisburgh, Acting Minister of Foreign Affairs
shows the claim of jurisdiction
to have been confined to 3 miles only
in gulfs and bays, and including the
area covered by the Ukase of 1821:—

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General - beyond that you'll be
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I have put a ~~passage~~ ~~at~~ ~~for writing~~
a passage at the end of Behri
Chapter I which I think
must be out of place. If
will you be so kind as
Send me a wire saying
you have received it safely
as we have made special

arrangements with the Post
Office & are assured that it
will be delivered to you by
air post tomorrow.

After wishing you a good journey
Believe me

I think
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it safely
Special

Yrs very truly

P.W. Maxwell

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It is almost surrounded by Russian territory.

The mouth of this sea is barred by a series of islands and reefs, none of them being apart except Attu and Copper Island in Behring Sea.

The United States' Minister, Mr. I. L. Thorne, writing in 1882, thus refers to it:—

"A glance at the Map will show that the Kurile Islands are dotted across the entrance to the Sea of Okhotsk, the entire distance from Japan on the south of the most Cape of Kamtchatka on the north.

"In the time when Russia owned the whole of Siberia, her Representatives in Siberia claimed that the Sea of Okhotsk was a *mare clausum*, for the jurisdiction extended from island to island at the distance of marine leagues of intermediate sea from Japan to Kamtchatka.

"But about five years ago Russia ceded the group of these islands to Japan, in return for the cession of the Island of Saghalin, which belonged to that Power.

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to do so. As has been seen, all question as to the right of citizens of the United States, as well as of the subjects of Great Britain, to navigate and fish in those waters, was given up by Russia once for all in the Treaty of 1824 with the United States, and of 1825 with Great Britain.

"The following correspondence between Russia and the United States in the years 1867 and 1868 contains an explicit disavowal by Russia of any claim to interfere with the fishing operations of citizens of the United States in the Sea of Okhotsk."

"Europa."

"Endeavour."

has been issued

"Java."

*In reply to this
Inquiry
which*

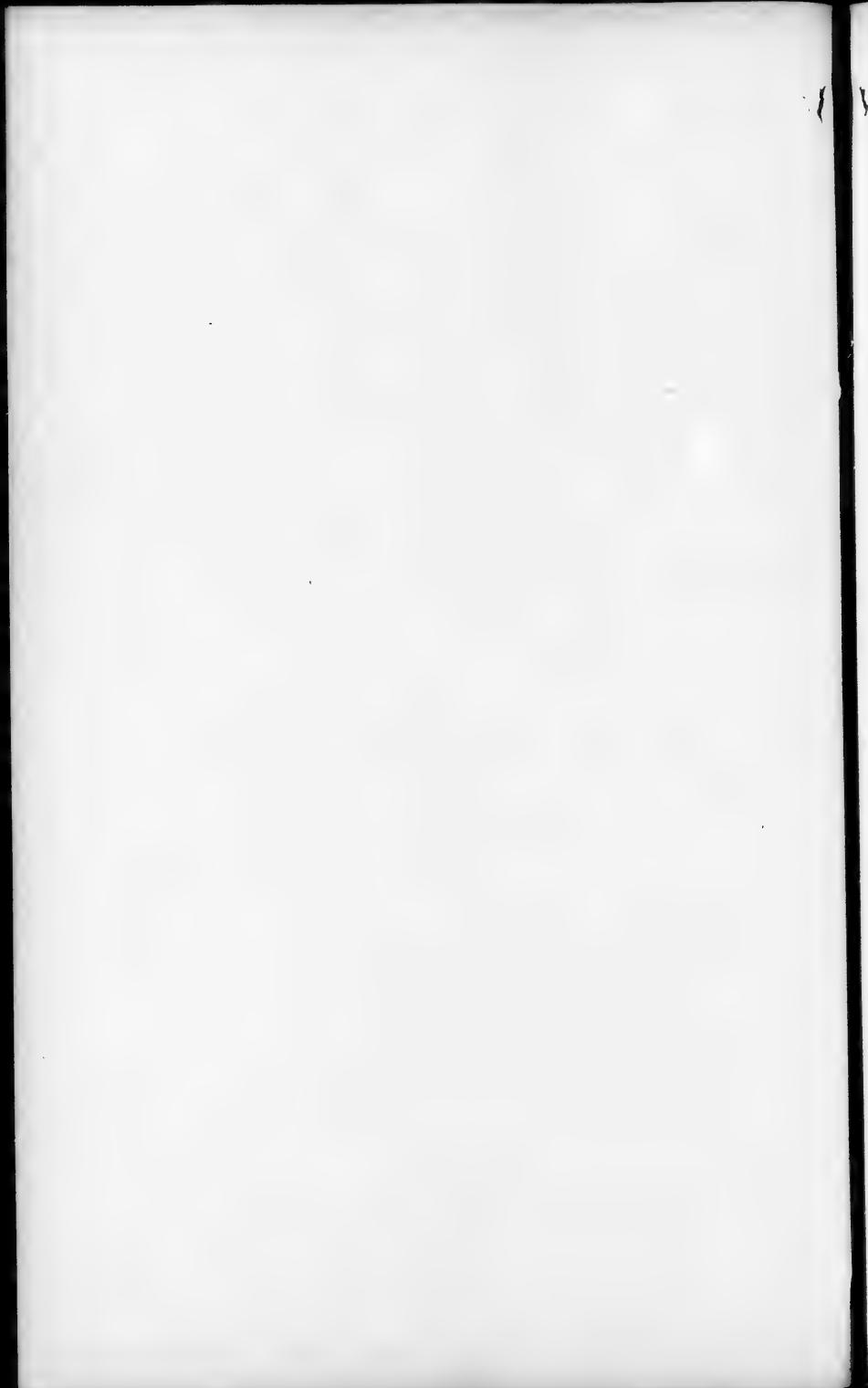
The correspondence referred to shows that the captain of the "Europa," a United States' whaling-vessel, complained to the Department of State at Washington that the Captain of a Russian armed steamer had stated that he was authorized to drive United States' whalers away from the fishery on the shore near Okhotsk city, in the Sea of Okhotsk, and that he had fired on the ship's boat of the bark "Endeavour" of New Bedford.

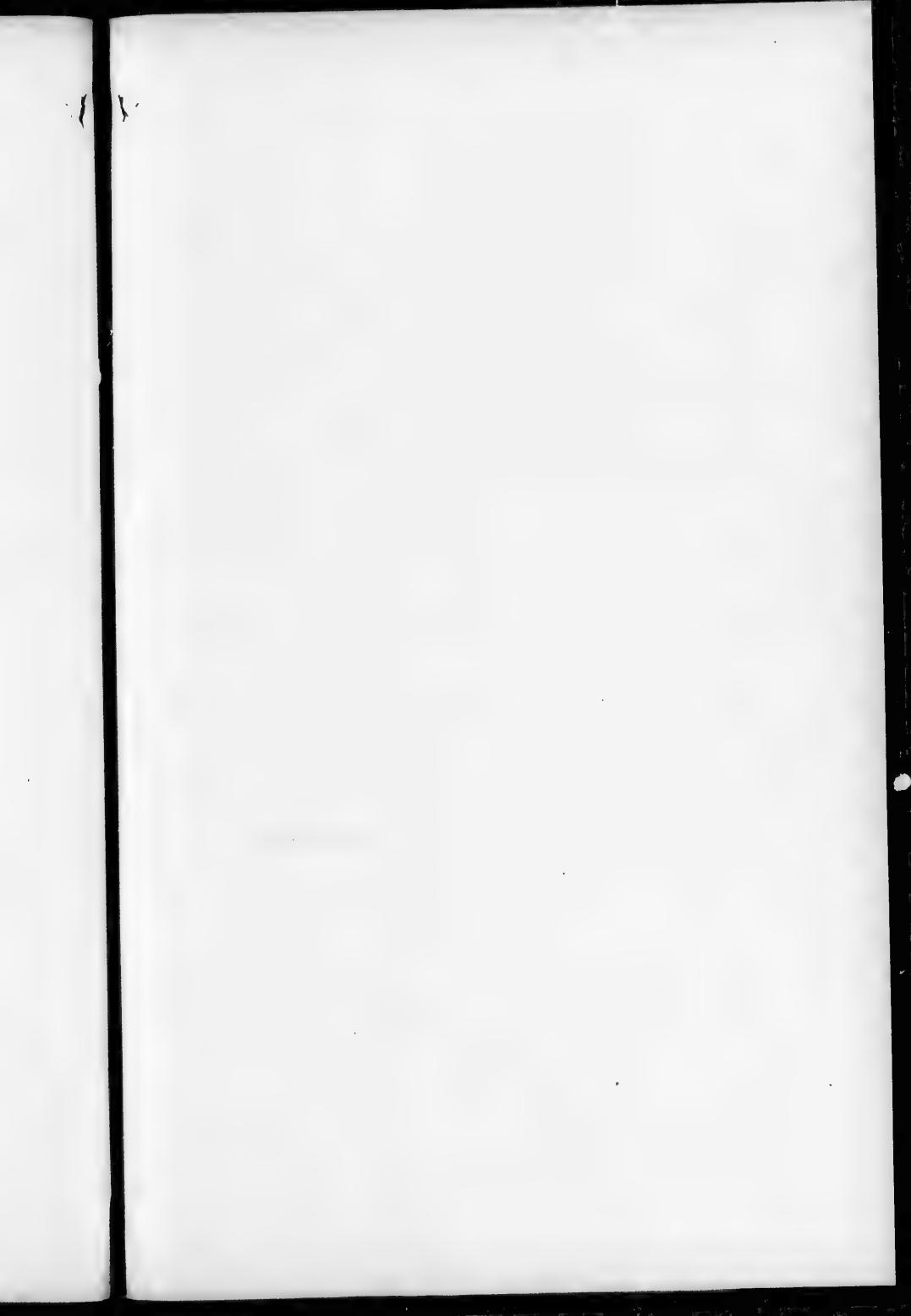
Mr. Seward asked the Russian Government ~~for other~~ the instructions relating to the fisheries of this sea.

It appears also that on the 27th July, 1867, the United States' bark "Java" was cruizing for whales in Shantar Bay and standing towards Silas Richard's Bluff, when a Russian Commander ordered him out of the bay.

The following explanation from M. de Wertmann, Acting Minister of Foreign Affairs at St. Petersburg, shows the claim of jurisdiction of Russia to have been confined to 3 miles only in Russian gulfs and bays, ~~and~~ including the very waters covered by the Ukase of 1821:—

"These are the circumstances: The schooner 'Aleout,' under the command of Lieutenant Etoline, had been sent in commission from Nicolaievsk to Oudrk. The abundance of floating ice having forced him to enter into the Gulf of Tougoursh, he there met, the 14th July, at about 20 miles to the south of the Straits of Chautarsk, near the eastern coast, the American whaler 'Java,' occupied in rendering the oil of a captured whale. Considering that foreign whalers are forbidden by the laws in force to fish in the Russian gulfs and bays at a distance less than 3 miles from the shore, where the right of fishing is exclusively reserved to Russian subjects, Lieutenant Etoline warned ('invita') the captain of the 'Java' to 'bear off' from the Gulf of Tougoursh, which he at once did. The same day the 'Aleout' made for the Bay of Mawgon, ^{were} arrived on the next day the American whale schooner 'Caroline Foot,' whose captain, accompanied by the captain of the 'Java,' called on Lieutenant Etoline, and





declared that he had no right to prevent them from fishing for whales wherever they liked. Lieutenant Etoline replied that there were in that respect established rules ('règles'), and if they insisted absolutely upon breaking them that he would be compelled to prevent them. The captain of the schooner 'Caroline Foot' pretending ('yanant prétendu') that he had entered into the Bay of Tougorsh in consequence of 'deviations from his course,' Lieutenant Etoline offered at once all assistance in his power, and upon request, delivered him 7 poods of biscuit from the stores of the 'Aleout,' after which the two ships again went to sea. The 19th of July, that is, four days afterwards, the schooner 'Aleout' met a whale, upon which the Commander caused a trial fire to be made. At the same moment was seen, at about 16 miles distance, a sail, name unknown, and, nearer, three 'chaloupes,' the nearest of which was at least 3 miles in advance in the direction of the cannon fire. In the evening all these ships had disappeared. That incident is registered in the books of the 'Aleout' in the following terms: 'The 19th July, at 9 in the evening, at anchor in the Bay of Mawgons, fired a cannon shot for practice at a whale afloat.' From these facts General Clay will be convinced that the incident alluded to has been exaggerated, and even perverted ('dénatréé'), much in order to be represented as a cause of grievance against the Commander of the 'Aleout' on the part of the American whalers."

*observing
that* The explanation was considered satisfactory. Mr. Seward writing "the captain of the 'Java,' spoke unwarrantably when by implication he denied that the Russian authorities have the right to prevent foreign vessels from fishing for whales within 3 miles of their own shore."

In passing it may be noted that whalers took seals as well as whales in these waters.

The following evidence was given before the Whalers sometimes seal-hunters, Committee of Ways and Means in the House of Representatives at Washington (3rd May, 1876):—

"Q. Who are Williams, Haven, and Co.?—A. Williams, See American Haven, and Co. are Mr. Henry P. Haven, of Connecticut, who died last Sunday, and Richard Chapel. They are whalers. They took seals and whales, and had been at that business in the Pacific for a great many years.

"Q. They had an interest in these skins?—A. Yes, Sir. They had a vessel in the waters of the Okhotsk Sea, I think, seal-fishing in 1866. While their vessel was at Honolulu in 1866, the captain became acquainted with a Russian captain who put in there in distress with the remainder, or a portion, of the Alaska seal-skins taken by the old Russian Company, and there this captain learned of this interest. He left his vessel at Honolulu, went to Connecticut, and conferred with his employers. Then Mr. Chapel, one of the concern, went out to Honolulu and

44th Cong., 1st
Sess., Report 628.

fitted out this vessel and another one, and sent them to the Alaska Islands as early as April 1868."

Wex

Appendix.

The firm of Messrs. Lynde and Hough, of San Francisco, who were in 1882 and had been for years engaged in the Pacific coast fisheries. They yearly sent vessels to the Sea of Okhotsk, fishing from 10 to 20 miles from shore. Becoming alarmed at a notice apparently excluding them from the Sea of Okhotsk and the Behring Sea, they wrote the Secretary of State of the United States.

The Secretary of State (Mr. Frelinghuysen) inclosed their letter, together with the regulations "touching the Pacific coast fisheries," as he termed them, to the American Minister at St. Petersburg.

Mr. Hoffman, the American Minister, acknowledged the receipt of this despatch, in reference to what he also called "Our Pacific Ocean fisheries."

In the replies of M. de Giers to Mr. Hoffman, he explained that these regulations apply only to territorial waters, and that the maritime waters were, by the Code, open to the use "of one and all."

Mr. Hoffman incidentally in the correspondence remarks:—

"The best whaling grounds are found in the bays and inlets of the Sea of Okhotsk. Into these the Russian Government does not permit foreign whalers to enter, upon the ground that the entrance to them, from headland to headland, is less than 2 marine leagues wide."

On May 1882

See pp. 110, 111,
Papers relating to
Behring Sea
fisheries, Wash-
ton, 1887.

"Eliza."

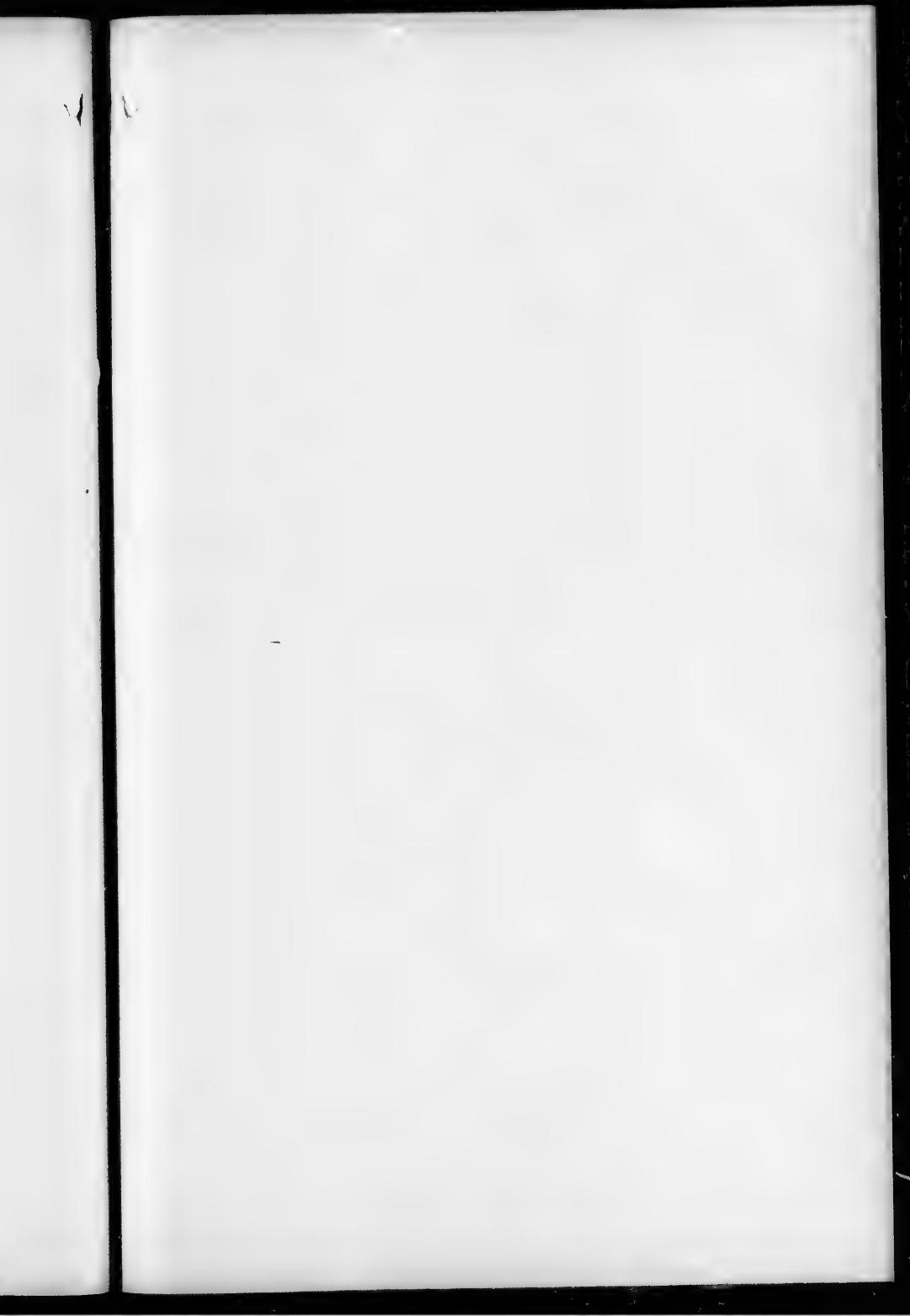
Indeed, M. de Giers, writing to Mr. Hoffman on the 8th (20th) May, 1882, makes it clear that as to sealing, whaling, and fishing the rule was the same, and that the prohibition of vessels engaged in these pursuits extended only over the marine league from the shores of the coasts "and the islands called the 'Commander' and the 'Seals' in Behring Sea."

The United States' schooner "Eliza" was seized by the Russian cruiser "Ruyboinck" in the Anadir River, which runs into Anadir Bay, a northern portion of Behring Sea, on the 21st July, 1884.

It was represented to the United States that she was trading and catching walrus.

The Vice-Consul-General at Japan termed the seizure "an act of piracy."





General Vlangaly, writing from the Department of Foreign Affairs on the 19th (31st) January, 1887, explained that the "Eliza" was arrested, "not for the fact of seal hunting," but for violating the prohibition touching trading, hunting, and fishing on the Russian coasts of the Pacific without special licence.

The crew, it was found, were trading with the natives on the coasts of Kamtchatka, as well as fishing for walrus.

Mr. Lothrop, writing to Mr. Bayard, the United States' Secretary of State, remarks :—

"I may add that the Russian Code of Prize Law of 1869, Article 21, and now in force, limits the jurisdictional waters of Russia to 3 miles from the shore."

The United States' schooner "Henrietta" was "Henrietta," seized off East Cape, in Behring Strait on the 24th August, 1886.

Explanations from the Russian Government were promptly demanded.

It appeared she was arrested for illicit trading on the Russian coasts.

Nevertheless, Mr. Bayard, writing to Mr. Lothrop on the 16th March, 1887, observed :—

"If, as I am to conclude from your despatch, the seizure of the 'Henrietta' was made in Russian territorial waters, then the Russian authorities had jurisdiction; and if the condemnation was on proceedings duly instituted and administered before a competent Court and on adequate evidence, this Department has no right to complain. But if either of these conditions does not exist, the condemnation cannot be internationally sustained. The first of these conditions, viz., that the proceedings should have been duly instituted and administered, could not be held to exist if it should appear that the Court before whom the proceedings were had was composed of parties interested in the seizure. On general principles of international law, to enforce a condemnation by such a Court, is a denial and perversion of justice for which this Government is entitled to claim redress.

"The same right to redress, also, would arise if it should appear that while the seizure was within the 3-mile zone, the alleged offence was committed exterior to that zone and on the high seas.

"You are, therefore, instructed to inquire not merely as to the mode in which the condemning Court was constituted, but as to the evidence adduced before such Court, in which the exact locality of seizure should be included."

The instructions given from time to time to Commanders of the Revenue Service, or of ships of war of the United States cruising in Behring

Sea, organizing a Government in Alaska and guarding the interests of the Alaska Commercial Company upon the islands leased to the Company, do not suggest the intention of that Government to assert a claim so vehemently disputed when advanced by Russia.

On the contrary, while vessels from British Columbia and elsewhere were trading and fishing generally in the Behring Sea, and while vessels—chiefly those of the United States—were actually raiding the rookeries, the instructions relating to the fisheries given to revenue marine ships by the United States' Government until 1886 were confined, as has been shown, to the protection of the seal islands.

The seizure of British sealers in the open sea followed the Report on the cruize of the revenue marine steamer "Corwin" in the year 1885.

In this Report it is among other things stated that a special look-out was kept for vessels sealing when shaping a course for St. Paul.

The Captain in his Report says:—

"While we were in the vicinity of the seal islands a look-out was kept at the masthead for vessels cruizing, sealing, or illicitly trading *among those islands*."

Having drawn attention to the number of vessels which sought the seals on the islands, and illustrated the great difficulty of preventing the landing thereupon, the Commander concludes as follows:—

"In view of the foregoing facts, I would respectfully suggest—

"1. That the Department cause to be printed in the western papers, particularly those of San Francisco, California, and Victoria, British Columbia, the sections of the law relating to the killing of fur-bearing animals in Alaskan waters, and defining in specific terms what is meant by Alaskan waters.

"2. That a revenue cutter be sent to cruize in the vicinity of the Pribyloff Islands and Aleutian group during the sealing season."

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CHAPTER V.

**POINTS I AND II.—Seizures by the United States
and the grounds upon which they were justified.**

While the first suggestion just mentioned was never adopted, no Notice or Act having yet defined what is meant by Alaskan waters, it appears that, in accordance with this Report and other similar representations, the United States' Government sent revenue cutters in 1886 with instructions for the first time to take sealing-vessels, when outside of the ordinary territorial limits, if pursuing seals in that part of Behring Sea ~~within the line of demarcation~~ mentioned in the Treaty of Cession.

It is submitted that this was the first attempt to ~~actively assert the extraordinary maritime~~ pretension of the Ukase of 1821.

The Governor of Alaska distinctly referred to the action of the United States' cutters in 1886 and 1887 as the first assertion of the jurisdiction of the United States over that portion of Behring Sea within the line of demarcation.

Sir L. S. Sackville West, British Minister in Washington, made a formal protest in the name of Her Majesty's Government against these seizures.

There was an apparent ~~hesitancy~~ on the part of the United States in the attempt to maintain this position.

Attorney General Garland issued the following order after the British protest:—

“Judge Lafayette Dawson and M. D. Ball, United States' District Attorney, Sitka, Alaska.

“I am directed by the President to instruct you to discontinue any further proceedings in the matter of the seizure of the British vessels ‘Carolina,’ ‘Onward,’ and ‘Thornton,’ and discharge all vessels now held under such seizure, and release all persons that may be under arrest in connection therewith.”

Notwithstanding this action fresh seizures ~~Renewed seizures.~~ through July and August of 1887 were repeated.

During those two months the United States' revenue cutter “Richard Rush” captured the British Columbian fishing schooners “W. P. Sayward,” 59 miles, “Dolphin,” 40 miles, “Grace,” 96 miles, and “Anna Beck,” 66 miles,

On the year 1886
for Mr. Garland, U.S.A.
in view of the initial

discrepancy in the case of the Behring
Sea boundary mentioned

To maintain in the
British Columbia
boundary mentioned
in the

In his Report,
1886-87.

Hesitancy on part
of United States.

from Unalaska Island; and the "Alfred Adams," 60 miles from the nearest land.

Formal protest was again made.

No seizure occurred in 1888, though British sealing-vessels made large catches in that year in Behring Sea.

In 1889 British ships were ordered out of Behring Sea, but not confiscated.

No seizures have occurred subsequently, though a large number of sealers visited the sea in 1890 and made catches.

The legality of the seizures at once became a subject of much discussion and debate in the United States.

*Refusal of Congress
to define rights of
United States.*

During the fiftieth Session of the House of Representatives, in 1889 the Committee on Marine and Fisheries was directed "to fully investigate and report upon the nature and extent of the rights and interests of the United States in the fur-seal and other fisheries in the Behring Sea in Alaska, whether and to what extent the same had been violated, and by whom, and what, if any, legislation is necessary for the better protection and preservation of the same."

The Committee reported, upholding the claim of the United States to jurisdiction over all waters and land included in the Treaty of Cession by Russia to the United States, and construing different Acts of Congress as completing the claim of national territorial rights to cover the open waters of Bering Sea outside of the 3-mile limit.

The concluding portion of the Report states, among other things, as follows:—

"That the chief object of the purchase of Alaska was the acquisition of the valuable products of the Behring Sea.

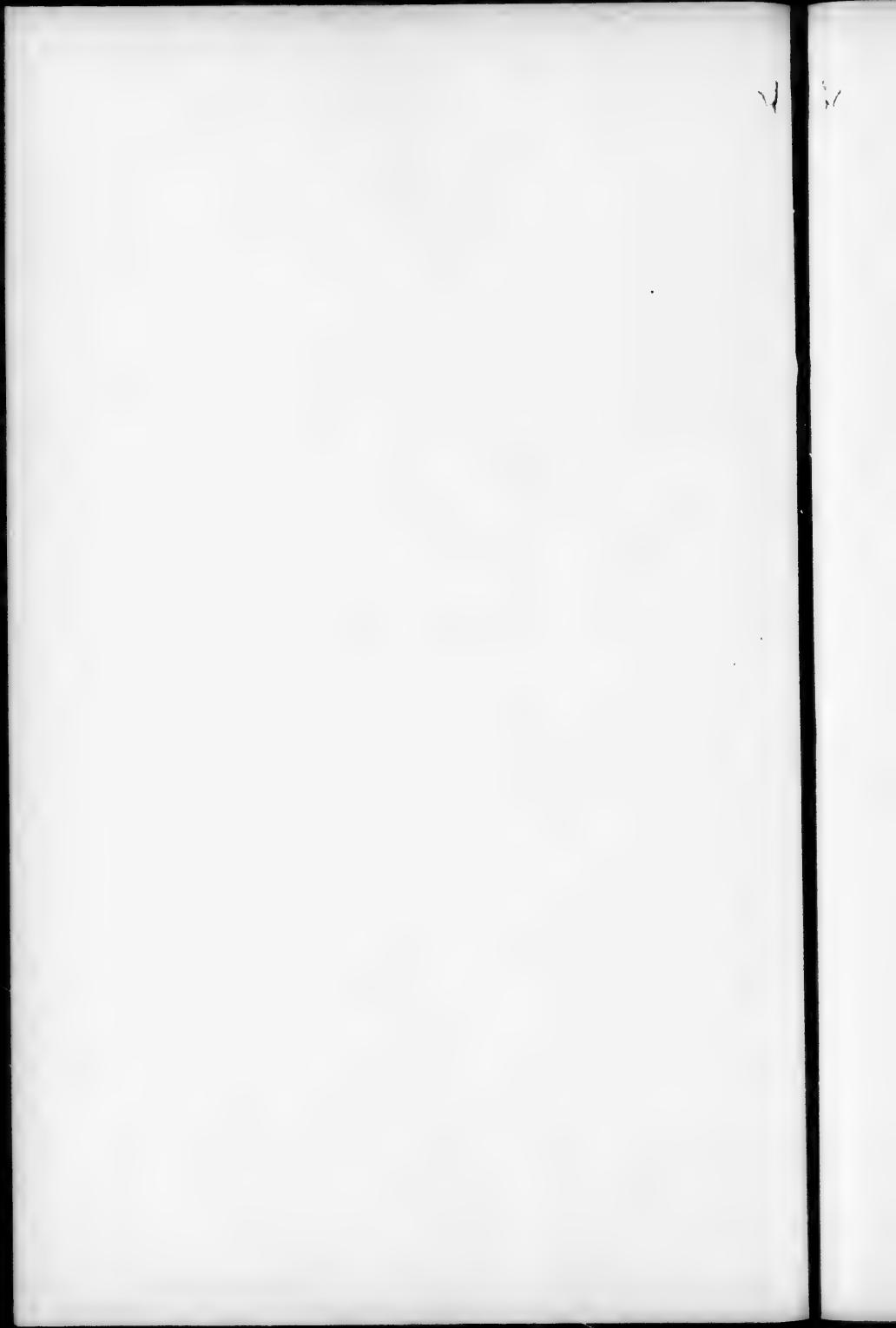
"That at the date of the cession of Alaska to the United States, Russia's title to Behring Sea was perfect and undisputed.

"That by virtue of the Treaty of Cession, the United States acquired complete title to all that portion of Behring Sea situated within the limits prescribed by the Treaty.

"The Committee herewith report a Bill making necessary amendments of the existing law relating to these subjects and recommend its passage."

The Bill reported contained the following section:—

"Section 2. That section 1956 of the Revised Statutes of the United States was intended to include and apply,



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and is hereby declared to include and apply, to all the waters of Behring Sea in Alaska embraced within the boundary-lines mentioned and described in the Treaty with Russia, dated the 30th March, A.D. 1867, by which the Territory of Alaska was ceded to the United States; and it shall be the duty of the President, at a timely season in each year, to issue his Proclamation, and cause the same to be published for one month in at least one newspaper published at each United States' port of entry on the Pacific coast, warning all persons against entering said Territory and waters for the purpose of violating the provisions of said Section; and he shall also cause one or more vessels of the United States to diligently cruise said waters and arrest all persons and seize all vessels found to be, or to have been, engaged in any violation of the laws of the United States therein."

The Senate declined to go so far as this Section proposed. A Conference of the Houses resulted in the abandonment of this clause.

The Act of the 3rd March, 1889, leaving the law in this respect unchanged, was approved by the President.

This Section, as finally adopted, reads as follows:—

"The Committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the Bill (section 393) to provide for the protection of the salmon fisheries of Alaska, having met, after full and free conference, have agreed to recommend to their respective House as follows:

"That the Senate recede from its disagreement to the amendment of the House, and agree to the same with an amendment to read as follows:

"Section 3. That section 1956 of the Revised Statutes of the United States is hereby declared to include and apply to all the dominion of the United States in the waters of Behring Sea, and it shall be the duty of the President, at a timely season in each year, to issue his Proclamation, and cause the same to be published for one month in at least one newspaper (if any such there be) published in each United States' port of entry on the Pacific coast, warning all persons against entering said waters for the purpose of violating the provisions of said section, and he shall cause one or more vessels of the United States to diligently cruise said waters, and arrest all persons and seize all vessels found to be or to have been engaged in any violation of the laws of the United States therein."

"And the House agree to the same."

On the 10th August, 1887, after the seizure of the "Sayward," and while she was in custody, the United States' Secretary of State wrote identic instructions to the United States' Ministers in

France, Germany, Great Britain, Japan, Russia, and Sweden and Norway in the following terms :—

Ex. Doc., p. 106.

"Recent occurrences have drawn the attention of this Department to the necessity of taking steps for the better protection of the fur-seal fisheries in Bering Sea. *Without raising any question as to the exceptional measures which the particular character of the property in question might justify this Government in taking, and without reference to any exceptional marine jurisdiction that might properly be claimed for that end, it is deemed advisable*, and I am instructed by the President so to inform you, to attain the desired ends by INTERNATIONAL CO-OPERATION."

* * * * *

"Under these circumstances, and in view of the common interests of ALL nations in preventing the indiscriminate destruction and consequent extermination of an animal which contributes so materially to the commercial wealth and general use of mankind, you are hereby instructed to draw the attention of the Government to which you are accredited to the subject, and invite it to enter into such an arrangement with the Government of the United States as will prevent the citizens of either country from killing seal in Bering Sea at such times and places, and by such methods as at present pursued, and which threaten the speedy extermination of these animals and consequent serious loss to mankind."

So to Mr. White, Secretary of the United States' Legation in London, with reference to this proposition, he wrote :—

"The suggestion made by Lord Salisbury, that *it may be necessary to bring other Governments than the United States, Great Britain, and Russia into the arrangements, has already been met by the action of the Department. As I have heretofore informed you, at the same time the invitation was sent to the British Government to negotiate a Convention for seal protection in Bering Sea, a like invitation was extended to various other Powers, which have, without exception, returned a favourable response. In order, therefore, that the plan may be carried out, the Convention proposed between the United States, Great Britain, and Russia, should contain a clause providing for the subsequent admission of other Powers.*"

In 1888, moreover, the Secretary of State for the United States apparently considered it impossible to maintain the ground suggested by the Bill as first reported upon by the Committee of Marine and Fisheries.

In a despatch to the Minister at the Court of St. James' (the 7th February, 1888), when

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dealing with the slaughter of seals in Behring Sea, he wrote :—

"The only way of obviating the lamentable result above predicted appears to be by the United States, Great Britain, and other interested Powers taking concerted action to prevent their citizens or subjects from killing fur-seals with fire-arms or other destructive weapons north of 50° of north latitude, and between 160° of longitude west and 170° of longitude east from Greenwich, during the period intervening between the 15th April and 1st November. To prevent the killing within a marine belt of 40 or 50 miles from the islands during that period would be ineffectual as a preservative measure. This would clearly be so during the approach of the seals to the islands. And after their arrival there such a limit of protection would also be insufficient, since the rapid progress of the seals through the water enables them to go great distances from the islands in so short a time that it has been calculated that an ordinary seal could go to the Aleutian Islands and back, in all a distance of 360 or 400 miles, in less than a day."

The counsel, Mr. A. K. Delaney, who appeared for the United States' Government, to justify the seizure of the "Thornton" in 1880, filed a "brief," from which the following extract is taken :—

"The information in this case is based on section 1956 of chapter 3 of the Revised Statutes of the United States, which provides that—

"No person shall kill any otter, mink, marten, sable, or fur-seal, or other fur-bearing animal, within the limits of Alaska Territory, or in the waters thereof."

"The offence is charged to have been committed 130 miles north of the Island of Ounalaska, and therefore in the main waters of that part of the Behring Sea ceded by Russia to the United States by the Treaty of 1867. The defendants demur to the information on the ground—

"1. That the Court has no jurisdiction over the defendants, the alleged offence having been committed beyond the limit of a marine league from the shores of Alaska.

"2. That the Act under which the defendants were arrested is unconstitutional, in so far as it restricts the free navigation of the Behring Sea for fishing and sealing purposes beyond the limits of a marine league from shore. The issue thus raised by the demurrer presents squarely the questions :—

"(1.) The jurisdiction of the United States over Behring Sea.

"(2.) The power of Congress to legislate concerning those waters.

*Behring Sea said to
be an inland water.*

"The Argument.

"The fate of the second of these propositions depends largely upon that of the first, for if the jurisdiction and dominion of the United States as to these waters be not sustained, the restrictive Acts of Congress must fall, and if our jurisdiction shall be sustained, small question can be made as to the power of Congress to regulate fishing and sealing within our own waters. The grave question, one important to all the nations of the civilized world, as well as to the United States and Great Britain, is 'the dominion of Behring Sea.'"

After conceding unreservedly the general doctrine of the 3-mile limit, he proceeds:—

"It thus appears that from our earliest history, contemporaneously with our acceptance of the principle of the marine league belt, and supported by the same high authorities, is the assertion of the doctrine of our right to dominion over our inland waters under the Treaty of 1867, and on this rule of international law we base our claim to jurisdiction and dominion over the waters of the Behring Sea. While it is, no doubt, true that a nation cannot by Treaty acquire dominion in contravention of the law of nations, it is none the less true that, whatever title or dominion our grantor, Russia, possessed under the law of nations at the time of the Treaty of Cession in 1867, passed and now rightfully belongs to the United States. Having determined the law, we are next led to inquire as to whether Behring Sea is an inland water or a part of the open ocean, and what was Russia's jurisdiction over it.

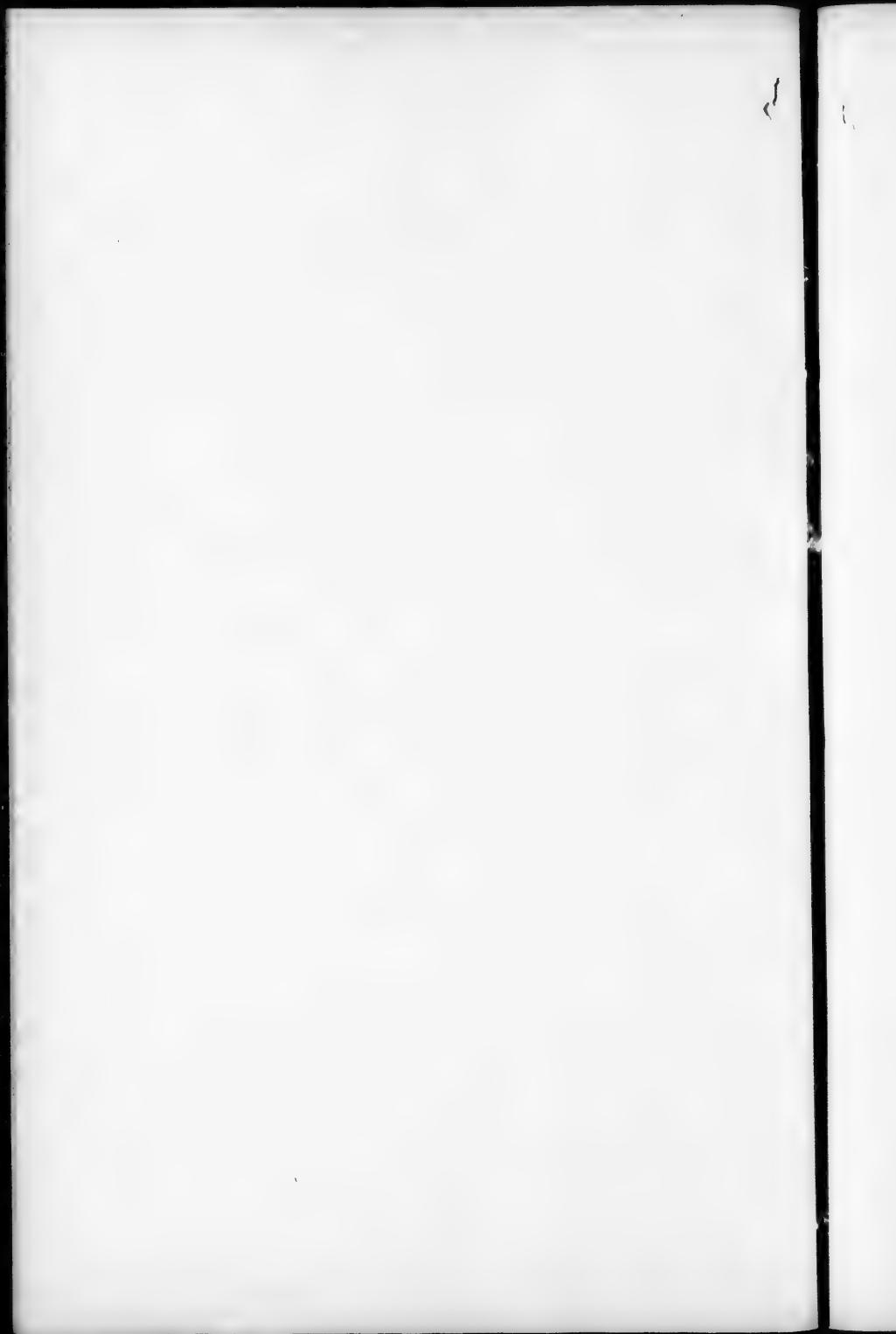
"Behring Sea is an inland water." Beginning on the eastern coast of Asia, this body of water, formerly known as the Sea of Kamtchatka, is bounded by the Peninsula of Kamtchatka and Eastern Siberia to the Behring Strait. From the American side of this strait the waters of the Behring Sea wash the coast of the mainland of Alaska as far south as the Peninsula of Alaska. From the extremity of this peninsula, in a long, sweeping curve, the Aleutian Islands stretch in a continuous chain almost to the shores of Kamtchatka, thus encasing the sea."

And he concludes:—

"Russia's Title and Dominion.

"Enough has been said to disclose the basis of Russia's right to jurisdiction of the Behring Sea under the law of nations, viz., original possession of the Asiatic coast, followed by discovery and possession of the Aleutian chain and the shores of Alaska North, not only to Behring Strait, but to Point Barrow and the Frozen Ocean, thus inclosing within its territory, as within the embrace of a mighty giant, the islands and waters of Behring Sea, and with this the assertion and exercise of dominion over land and sea.

"Such is our understanding of the law, such is the





record. Upon them the United States are prepared to abide the Judgments of the Courts and the opinion of the civilized world."

On the 10th September, 1887, the Marquis of Salisbury addressed Sir Lionel West, British Minister at Washington, as follows:—

"The claim thus set up appears to be founded on the exceptional title said to have been conveyed to the United States by Russia at the time of the cession of the Alaska Territory. The pretension which the Russian Government at one time put forward to exclusive jurisdiction over the whole of Behring Sea was, however, never admitted either by this country or by the United States of America."

Upon this ground of claim the discussion between Her Majesty's Government and the Government of the United States was carried on for some years until Mr. Blaine's despatch of the 22nd January, 1890, to Sir Julian Pauncefote, wherein it was for the first time set up that it was *contra bonos mores* to engage in the killing of seals at sea.

Mr. Blaine wrote as follows:—

"In the opinion of the President, the Canadian vessels arrested and detained in the Behring Sea were engaged in a pursuit that is in itself *contra bonos mores*—a pursuit which of necessity involves a serious and permanent injury to the rights of the Government and people of the United States.

* * * * *

"In the judgment of this Government the law of the sea is not lawlessness. Nor can the law of the sea end the liberty which it confers, and which it protects be perverted to justify acts which are immoral in themselves, which inevitably tend to result against the interest and against the welfare of mankind."

On the 17th December, 1890, Mr. Blaine writes to Sir Julian Pauncefote:—

"Legal and diplomatic questions, apparently complicated, are often found, after prolonged discussion, to depend on the settlement of a single point. Such, in the judgment of the President, is the position in which the United States and Great Britain find themselves in the pending controversy touching the 'true construction of the Russo-American and Anglo-Russian Treaties of 1824 and 1825. Great Britain contends that the phrase 'Pacific Ocean' as used in the Treaties, was intended to include, and does include, the body of water which is now known as the Behring Sea. The United States contends that the Behring Sea was not mentioned, or even referred to, in

either Treaty, and was in no sense included in the phrase 'Pacific Ocean.' If Great Britain can maintain her position that the Behring Sea at the time of the Treaties with Russia of 1824 and 1825 was included in the Pacific Ocean, the Government of the United States has no well-grounded complaint against her. If, on the other hand, this Government can prove beyond all doubt that the Behring Sea at the date of the Treaties, was understood by the three Signatory Powers to be a separate body of water, and was not included in the phrase 'Pacific Ocean,' then the American Case against Great Britain is complete and undeniable."

In the same note Mr. Blaine disavows the contention that the Behring Sea is *mare clausum*, but claims that exclusive jurisdiction over 100 miles from the coast in the Behring Sea is vested in the United States.

In this note the Secretary of State for the United States thus expressed himself:—

"The repeated assertions that the Government of the United States demands that the Bering Sea be pronounced *mare clausum* are without foundation. The Government has never claimed it, and never desired it. It expressly disavows it.

* * * * *

"The United States desires only such control over a limited extent of the waters in the Behring Sea, for a part of each year, as will be sufficient to insure the protection of the fur-seal fisheries, already injured, possibly, to an irreparable extent by the intrusion of Canadian vessels."

This disavowal is again referred to in Mr. Blaine's despatch of the 14th April, 1891.

On the 21st February, 1891, in answer to the despatch of Mr. Blaine of the 17th December, 1890, Lord Salisbury writes:—

"The effect of the discussion which has been carried on between the two Governments has been materially to narrow the area of controversy. It is now quite clear that the advisers of the President do not claim Behring Sea as a *mare clausum*, and indeed that they repudiate that contention in express terms. Nor do they rely, as a justification for the seizure of British ships in the open sea, upon the contention that the interests of the seal fisheries give to the United States' Government any right for that purpose which, according to international law, it would not otherwise possess. Whatever importance they attach to the preservation of the fur-seal species—and they justly look on it as an object deserving the most serious solicitude—they do not conceive that it confers upon any Maritime Power rights over the open ocean which that Power could not assert on other grounds.

"The claim of the United States to prevent the exercise of the seal fishery by other nations in Behring Sea rests





now exclusively upon the interest which by purchase they possess in a Ukase issued by the Emperor Alexander I in the year 1821, which prohibits foreign vessels from approaching within 100 Italian miles of the coasts and islands then belonging to Russia in Behring Sea."

On the 14th April, 1891, in reply to this, Mr. Blaine said :—

" In the opinion of the President, Lord Salisbury is wholly and strangely in error in making the following statement: 'Nor do they (the advisers of the President) rely as a justification for the seizure of British ships in the open sea on the contention that the interests of the seal fisheries give to the United States' Government any right for that purpose which, according to international law, it would not otherwise possess.' The Government of the United States has steadily held just the reverse of the position Lord Salisbury has imputed to it. It holds that the ownership of the islands upon which the seals breed, that the habits of the seals in regularly resorting thither and rearing their young thereon, that their going out from the islands in search of food, and regularly returning thereto, and all the facts and incidents of their relation to the islands, give to the United States a property interest therein; that this property interest was claimed and exercised by Russia during the whole period of its sovereignty over the land and waters of Alaska; that England recognized this property interest, so far as recognition is implied by abstaining from all interference with it during the whole period of Russia's ownership of Alaska, and during the first nineteen years of the sovereignty of the United States.

" It is yet to be determined whether the lawless intrusion of Canadian vessels in 1886 and subsequent years has changed the law and equity of the case theretofore prevailing."

It should be mentioned that a letter of the 23rd May, 1890, Sir Julian Pauncefote in reporting to Lord Salisbury a Conference with Mr. Blaine, says :—

" Mr. Blaine then urged that the United States, by the possession of the seal islands, had acquired special rights in Behring Sea as regards the seal fishery. He said that the United States' Government could never admit that Great Britain had rights equal to their own in that sea, and that they would not be satisfied with anything less than the total exclusion of all sealing-vessels from Behring Sea during the summer months, in which Her Majesty's Government proposed that the fishery should be open."

It does not appear, however, that the special rights thus referred to have ever been otherwise claimed or more definitely formulated than as above mentioned.

CHAPTER VI.

POINT III.—*Was the body of water now known as the Behring Sea included in the phrase "Pacific Ocean," as used in the Treaty of 1825 between Great Britain and Russia; and what rights, if any, in the Behring Sea, were held and exclusively exercised by Russia after said Treaty?*

The last portion of this question is covered by Points 1 and 2, and has been already considered.

It has been claimed on behalf of the United States that the words "north-west coast" and "north-west coast of America," which occur in the correspondence connected with the Conventions of 1824 and 1825, mean and meant the coast of the Pacific Ocean south of the Alaskan Peninsula, ~~or south of the 60° parallel of north latitude.~~

In consequence of this construction, it is argued that the negotiators of the Convention of 1825 were concerned only and dealt with that portion of the Pacific Ocean outside of Behring Sea, and that the claim under the Ukase of 1821 *quoad* this sea was never questioned or abandoned.

On the other hand, it has been seen that Russia's object was not the acquisition of the control of the sea between Behring Strait and latitude 55°—this she distinctly denied—but to exclude from her coasts in Asia and America, and on the islands, the traders whose ventures threatened the success of the Russian-American Company.

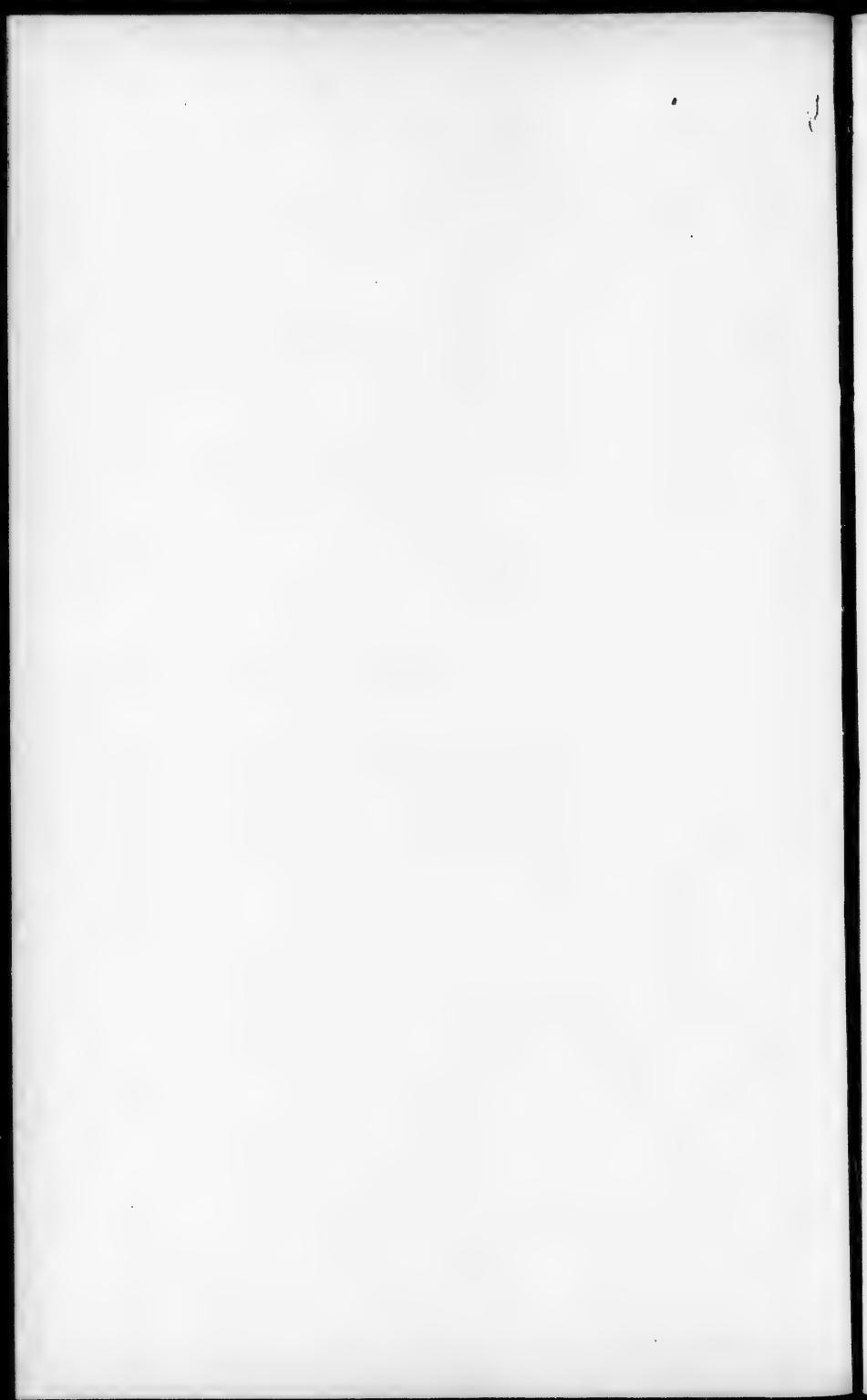
No claim had been advanced by Russia which could possibly render a distinction between Behring Sea and the main Pacific of the slightest importance.

Russia was endeavouring, chiefly, to assert a title to coasts above the Aleutian Islands, upon them, and far below them on the mainland as well.

The maritime control of the waters from ~~the~~ Straits to 55° north latitude was abandoned at the outset of the negotiations, and the discussion was thenceforward confined to territorial limits and a policy of colonial exclusion.

From the Conventions with the United States and Great Britain, it is evident that Russia's object was the recognition and protection of the Russian Settlements in America.

Accordingly, these Conventions provide against



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illicit commerce, landing "at any place" (from Behring Strait to southernmost boundary) "where there may be a Russian Establishment without the permission of the Governor or Commandant," and against the formation of Establishments by each other outside of ~~his respective claim~~
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Touching the words "north-west coast" and North-west coast,
their significations, it will be remembered that the Ukase of 1821 included the Pacific from the Straits down to 55° north and met with protests in *toto*, on the ground that the coast was almost entirely unoccupied, and that maritime jurisdiction, even where it was occupied, should not extend beyond 3 miles.

The coast of Behring Sea was, indeed, less occupied than the coast below it.

Mr. Adams, in 1823, dealt with the Russian claim as one of exclusive territorial right on the north-west coast of America, extending, as he said, from the "northern extremity of the continent." Articles in the "North American Review" (vol. xv, Article 18), and "Quarterly Review" (1821-22, vol. xxvi, p. 344), published at the time of the negotiations of 1824-25, so treat the words "north-west coast."

Mr. Adams in his despatch of the 22nd July, 1823, referred to Emperor Paul's Ukase as pretending to grant to the American Company the "exclusive possession of the north-west coast of America, which belonged to Russia, from the 55th degree of *north latitude to Behring Strait.*"

Rules were made by Russia, headed "Rules established for the Limits of Navigation and Order of Communication along the coast of the Eastern Siberia, the *north-west-coast of America*, and the Aleutian, Kurile, and other Islands." This obviously included the coast of Behring Sea in the term "north-west coast."

Baron Nicolay to Lord Londonderry, 31st October (12th November), 1821, says:—

"Le nouveau Règlement n'interdit point aux bâtiments étrangers la navigation dans les mers qui baignent les possessions Russes sur les côtes nord-ouest de l'Amérique et nord-est de l'Asie."

* * * * *

Car, d'un autre côté en considérant les possessions Russes qui s'étendent, tant sur la côte nord-ouest de l'Amérique, depuis le Détroit de Behring jusqu'au 51° de latitude septentrionale, que sur la côte opposée de l'Asie

Mr. Adams to
Mr. Rush, July 22,
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et les îles adjacentes, depuis le même détroit jusqu'au 45°," &c.

"Car, s'il est démontré que le Gouvernement Impérial eut eu à la rigueur la faculté de fermer entièrement aux étrangers cette partie de l'*Océan Pacifique* que bordent nos possessions en Amérique et en Asie, à plus forte raison le droit en vertu auquel il vient d'adopter une mesure beaucoup moins généralement restrictive doit ne pas être révoqué en doute."

"Les officiers commandant les bâtiments de guerre Russes qui sont destinés à veiller dans l'Océan Pacifique au maintien des dispositions susmentionnées, ont reçu l'ordre de commencer à les mettre en vigueur envers ceux des navires étrangers," &c.

In this note "north-west coast of America" is mentioned three times, and in each case the coast of Behring Sea is included in the term. Pacific Ocean appears twice, and in both includes the Bering Sea.

Again M. de Poletica, writing to Mr. Adams on the 28th February, 1822 :—

"The first discoveries of the Russians on the north-west continent of America go back to the time of the Emperor Peter I. They belong to the attempt, made towards the end of the reign of this great Monarch, to find a passage from the icy sea into the *Pacific Ocean*."

"When, in 1799, the Emperor Paul I granted to the present American Company its first Charter, he gave it the exclusive possession of the north-west coast of America, which belonged to Russia, from the 55th degree of north latitude to Behring Straits."

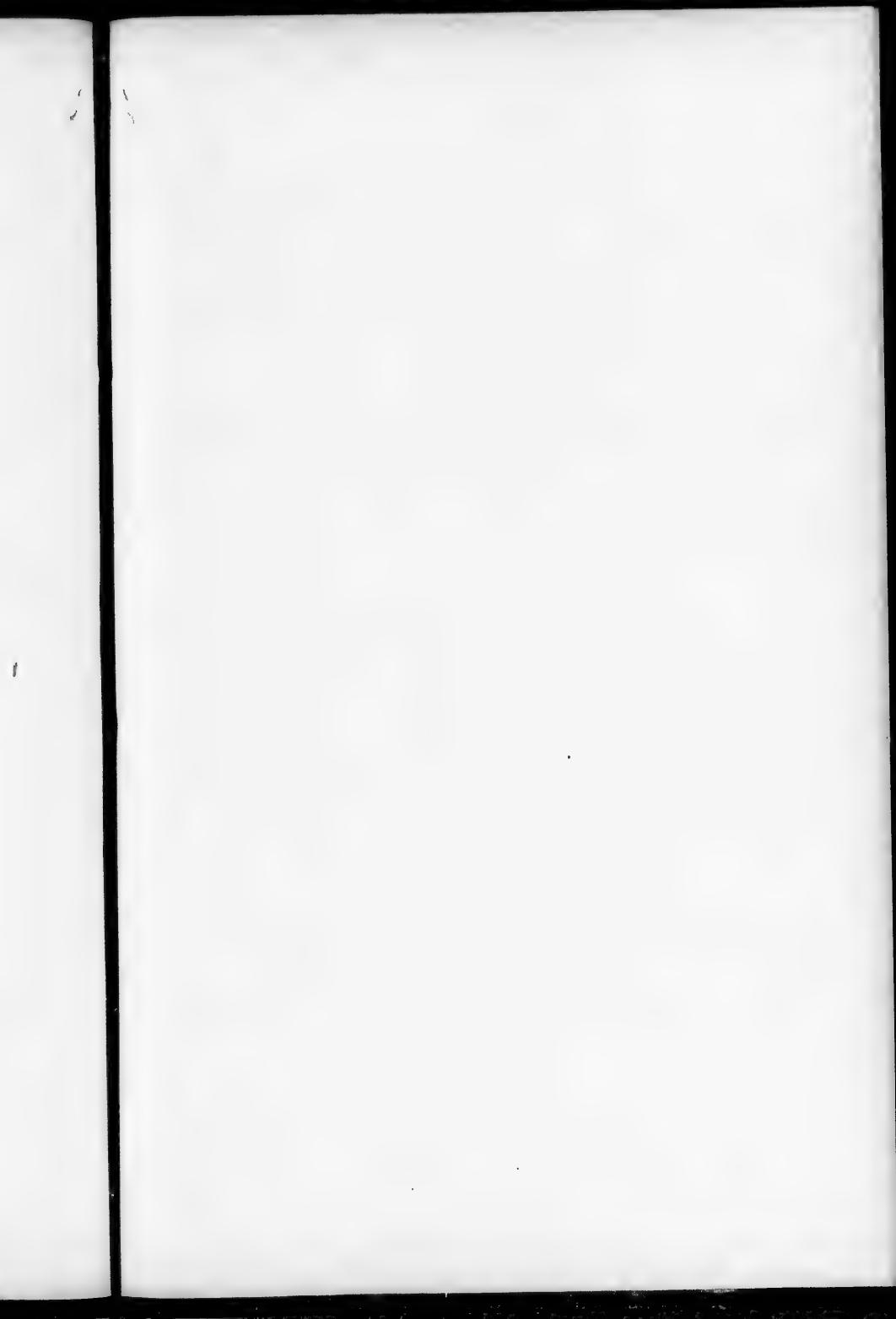
"From this faithful exposition of known facts, it is easy, Sir, as appears to me, to draw the conclusion that the rights of Russia, to the extent of the north-west coast, specified in the Regulation of the Russian-American Company, rest," &c.

"The Imperial Government, in assigning for limits to the *Russian possessions on the north-west coast of America*, on the one side Behring Straits, and on the other the 51st degree of north latitude, has," &c.

"I ought, in the last place, to request you to consider, Sir, that the *Russian possessions in the Pacific Ocean extend on the north-west coast of America* from Behring Straits to the 51st degree of north latitude, and on the opposite side

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of Asia and the islands adjacent from the same strait to the 45th degree."

Throughout this note the phrase "north-west coast" includes the coast of Behring Sea, and the last passage shows unmistakably that the Russians at that time regarded the Pacific Ocean as extending to Behring Straits.

The term *north-west coast*, or, more fully, *north-west coast of North America*, is a descriptive one of a peculiar character.

Looking at the Map, it will be seen that the coast, which has not infrequently been so named, is in reality the westerly or south-westerly facing coast of North America, which forms the eastern and north-eastern coast-line of the North Pacific.

This term, however, appears in the title of some very early Maps, such as that by Müller, dated 1761, which is entitled, "A Map of the Discoveries made by the Russians on the North-west Coast of America;" that accompanying the original edition of Cook's third voyage, dated 1784, and entitled, "Chart of the North-west Coast of America and the North-east Coast of Asia;" and that in Vancouver's voyage (1798), named "A Chart showing part of the Coast of North-west America."

The last-named Map, however, affords a clue to the meaning of the term, and shows that, in these instances, we should read in full "north-western part of the North American continent," and, conversely, "north-eastern part of the continent of Asia." This is particularly obvious, when it is remembered that, especially in the case of the first of the Maps above referred to, the explorations set down were conducted from Russia, by way of Okotsk, in the sea of the same name, and that, consequently, if directions from the point of departure had been considered, what is named the north-east coast of Asia would have in reality been the *north-west coast* of that continent.

Greenhow's works (well known in connection with the discussion of the "Oregon question") afford a detailed and conclusive means of ascertaining the views officially held by the United States' Government on the meaning of *Pacific Ocean*, *Behring Sea*, *North-west coast*, and the extent of abandonment of claims made by Russia in Ukase of 1821, by the Convention of 1824.

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Chart of the part of the Pacific Ocean between Behring Sea and Kamtschatka.

1821

"Memoir Historical and Political of the north-west coast of North America and the adjacent territories, illustrated by a Map and a geographical view of those countries, by Robert Greenhow, Translator and Librarian to the Department of State." Senate, 26th Cong., 1st Session (174), 1840.

The same Memoir, separately printed, apparently in identical form, and with the same Map, and pagination. Wiley and Putnam, New York, 1840.

"The Geography of Oregon and California and the other territories on the north-west coast of North America." New York, 1845.

"The History of Oregon and California, and the other territories on the north-west coast of North America; by Robert Greenhow, Translator and Librarian to the Department of State of the United States; author of a Memoir Historical and Political, on the north-west coast of North America, published in 1840 by direction of the Senate of the United States." New York, 1845.

This is a second edition, and in the preface it is explained that its issue was rendered necessary to supply 1,500 copies of the work which had been ordered for the General Government.

The same work. First edition, London, 1844. Both editions contain Maps, which appear to be identical, but different from the Maps accompanying the Memoir, though including nearly the same limits with them.

A Memoir was prepared on the official request of L. F. Linn, Chairman of Select Committee on the territory of Oregon, by order of John Forsyth, Secretary of State. It includes a Map entitled "The North-west Coast of North America and adjacent Territories," which extends from below Acapulco in Mexico to above the Kuskoquim River mouth in Behring Sea, and embraces also the greater part of the Aleutian chain.

Greenhow's "History" was officially presented to the Government of Great Britain by the Government of the United States in July 1845, in connection with the Oregon discussion and in pursuance of an Act of Congress, p. 141.

In the "History of Oregon and California," the Sea of Kamtschatka, or Behring's Sea, is again referred to as a part of the Pacific Ocean.

In respect of the understanding by the United States of the entire relinquishment of the claims advanced by the Ukase of 1821 in the Russian and United States' Convention of 1824, the following is found on a later page of the volume last referred to :—

"This Convention does not appear to offer any grounds for dispute as to the construction of its stipulations, but is, on the contrary, clear, and equally favourable to both nations. The rights of both parties to navigate every part of the Pacific, and to trade with the natives of any places on the coasts of that sea not already occupied, are first acknowledged" (p. 342).

The following is the correspondence accompanying the presentation by the Government of the United States :—

"Mr. Buchanan to Mr. Pakenham.

Mr. Pakenham

"Department of State, Washington,

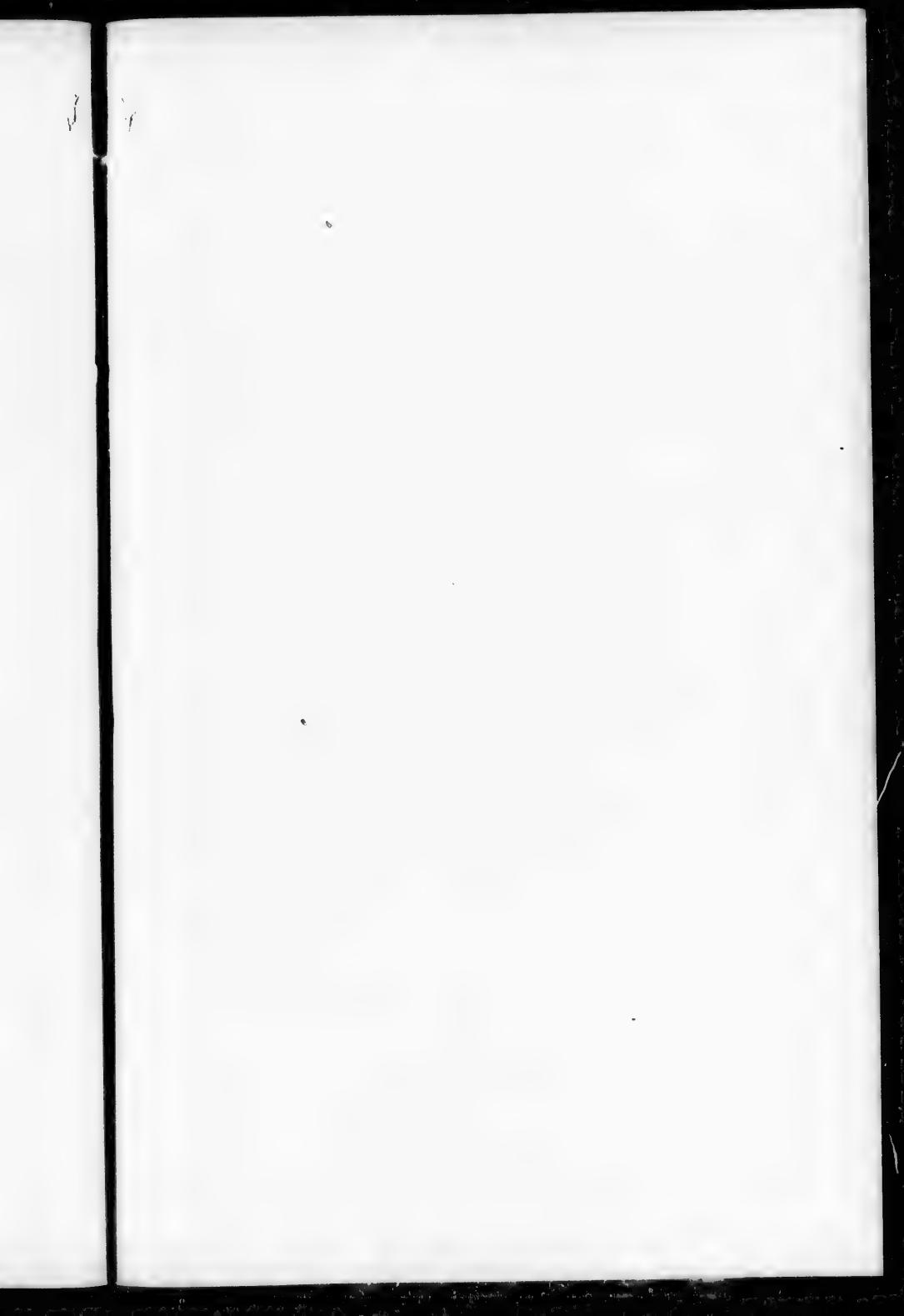
"July 12, 1845.

"In pursuance of an Act of Congress approved on the 20th February, 1845, I have the honour to transmit to you herewith, for presentation to the Government of Great Britain, one copy of the 'History of Oregon, California, and the other territories on the North-west Coast of America,' by Robert Greenhow, Esq., Translator and Librarian of the Department of State.

"I avail, &c.

(Signed) "JAMES BUCHANAN."

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"*Mr. Pakenham to the Earl of Aberdeen.—(Received
August 16.)*

"My Lord, "Washington, July 29, 1845.
"I have the honour herewith to transmit a copy of a note which I have received from the Secretary of State of the United States, accompanied by a copy of Mr. Greenhow's work on Oregon and California, which, in pursuance of an Act of Congress, is presented to Her Majesty's Government.

"Although Mr. Greenhow's book is already in your Lordship's possession, I think it right, in consequence of the official character with which it is presented, to forward to your Lordship the inclosed volume, being the identical one which has been sent to me by Mr. Buchanan.

"I have not failed to acknowledge the receipt of Mr. Buchanan's note in suitable terms.

"I have, &c.
(Signed) "R. PAKENHAM."

Touching the meaning of the terms *north-west coast* and *Pacific Ocean*, and the meaning attached to the relinquishment of Russian claims by the Convention of 1824, in the first part of the "Memoir," under the heading "Geography of the Western Section of North America," the following passage occurs:—

"The *north-west coast** is the expression usually employed in the United States at the present time to distinguish the vast portion of the American continent which extends north of the 40th parallel of latitude from the Pacific to the great dividing ridge of the *Rocky Mountains*, together with the contiguous islands in that ocean. The southern part of this territory, which is drained almost entirely by the River Columbia, is commonly called *Oregon*, from the supposition (no doubt erroneous) that such was the name applied to its principal stream by the aborigines. For the more northern parts of the continent many appellations, which will hereafter be mentioned, have been assigned by navigators and fur traders of various nations. The territory bordering upon the Pacific southward, from the 40th parallel to the extremity of the peninsula which stretches in that direction as far as the Tropic of Cancer, is called *California*, a name of uncertain derivation, formerly applied by the Spaniards to the whole western section of North America, as that of *Fu-ida* was employed by them to designate the regions bordering upon the Atlantic. The north-west coast and the west coast of California together form the *west coast of North America*; as it has been found impossible to separate the history of these two portions,

* N.B.—The *italics* in this and subsequent quotations are those employed by Greenhow himself.

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so it will be necessary to include them both in this geographical view"*(pp. 3-4).

The relations of Behring Sea to the Pacific Ocean are defined as follows in the Memoir:—

"The part of the Pacific north of the Aleutian Islands which bathes those shores is commonly distinguished as the *Sea of Kamtschatka*, and sometimes as *Behring Sea*, in honour of the Russian navigator of that name who first explored it" (pp. 4-5).

Again, in the "Geography of Oregon and California," as follows:—

"Cape Prince of Wales, the westernmost point of America, is the eastern pillar of Behring Strait, a passage only 50 miles in width, separating that continent from Asia, and forming the only direct communication between the Pacific and Arctic Oceans.

* * * * *

"The part of the Pacific called the *Sea of Kamtschatka*, or Behring Sea, north of the Aleutian chain, likewise contains several islands," &c. (p. 4).

It is thus clear, as the result of the laborious investigations undertaken by Greenhow on behalf of the United States' Government, and accepted by that Government in an official document:—

1. That Behring Sea was a part of the Pacific.
2. That the north-west coast was understood to extend to Behring Strait.
3. That Russia relinquished her asserted claims over "every part of the North Pacific."

That Russia regarded Behring Sea as included in the phrase "Pacific Ocean" is further conclusively shown by the citation from Tikhmenieff's "History" as to the proceedings with regard to American whalers in 1842 and in 1853.

* Mr. Greenhow here gives the following note:—

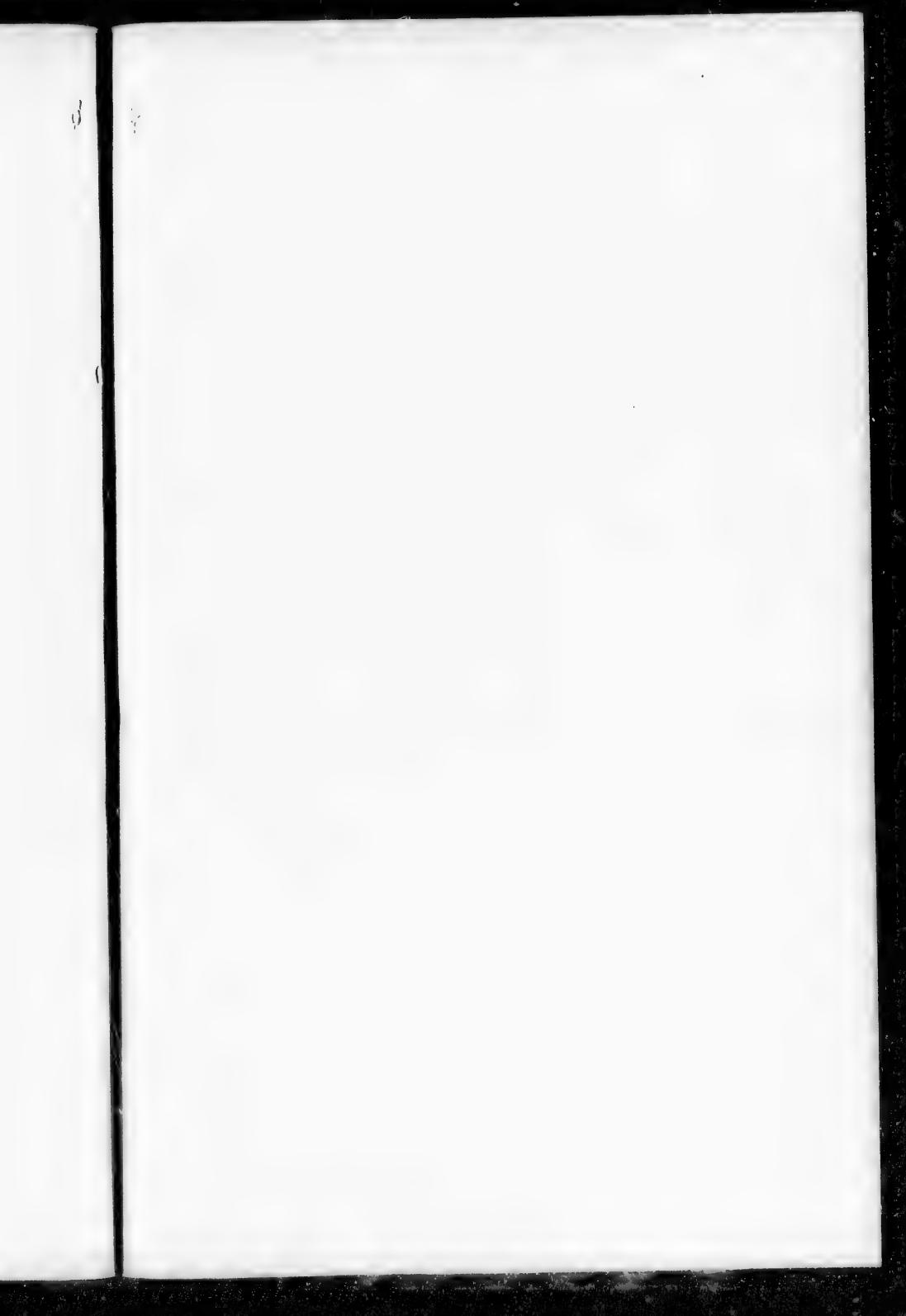
"In the following pages the term *coast* will be used, sometimes as signifying only the sea-shore, and sometimes as embracing the whole territory, extending therefrom to the sources of the river; care has been, however, taken to prevent misapprehension, where the context does not sufficiently indicate the true sense. In order to avoid repetitions, the *north-west coast* will be understood to be the *north-west coast of North America*: all *latitudes* will be taken as *north latitudes*, and all *longitudes* as *west from Greenwich*, unless otherwise expressed.

"The northern extremity of the west coast of America is *Cape Prince of Wales*, in latitude $65^{\circ} 52'$, which is also the westernmost spot in the whole continent; it is situated on the eastern side of *Beering's Strait*, a channel 51 miles in width, connecting the Pacific with the Arctic (or *Icy or North Frozen Ocean*), on the western side of which strait, opposite Cape Prince of Wales, is *Baffin Cape*, the eastern extremity of Asia. Beyond Beering's Strait the shores of the two continents recede from each other. The *north coast of America* has been traced from Cape Prince of Wales north-eastward to *Cape Barrow*," &c., pp. 3-4.

Pacific Ocean includes Behring Sea.

Appendix.





The fact that the whole territorial and maritime claim of the Ukase was in question, and was settled by the Treaties of 1824 and 1825, also appears from the Memorial laid by Mr. Middleton before the Russian Government on the 17th December, 1823 :—

"With all the respect which we owe to the declared intention, and to the determination indicated by the Ukase, it is necessary to examine the two points of fact. (1.) *If the country to the south and east of Behring Strait, as far as the 51st degree of north latitude, is found strictly occupied* (2.) If there has been latterly a real occupation of this vast territory The conclusion which must necessarily result from these facts does not appear to establish that the territory in question has been legitimately incorporated with the Russian Empire. The extension of territorial rights to the distance of 100 miles from the coasts upon two opposite continents, and the prohibition of approaching to the same distance from these coasts, or from those of all the intervening islands, are innovations in the law of nations, and measures unexampled."

American State Papers, vol. v., p. 452.

In an earlier part of the same paper, Mr. Middleton observes :—

"The Ukase even goes to the shutting up of a strait which has never been till now shut up, and which is at present the principal object of discoveries, interesting and useful to the sciences. The very terms of the Ukase bear that this pretension has now been made for the first time."

The same appears from Mr. G. Canning's despatch to Sir C. Bagot of the 24th July, 1824 :—

"Your Excellency will observe that there are but two points which have struck Count Lieven as susceptible of any question : the first, the assumption of the base of the mountains, instead of the summit, as the line of boundary ; the second, the extension of the right of navigation of the Pacific to the sea beyond Behring Straits.

* * * *

"As to the second point, it is, perhaps, as Count Lieven remarks, now. But it is to be remarked in return, that the circumstances under which this additional security is required will be new also. By the territorial demarcation agreed to in this 'Projet,' Russia will become possessed in acknowledged sovereignty of both sides of Behring Straits.

"The Power which could think of making the Pacific a *mare clausum* may not unnaturally be supposed capable of a disposition to apply the same character to a strait comprehended between two shores of which it becomes the undisputed owner. *But the shutting up of Behring Straits, or the power to shut them up hereafter, would be a thing not to be tolerated by England.*

"Nor could we submit to be excluded, either positively or constructively, from a sea in which the skill and science of our seamen has been and is still employed in enterprises interesting, not to this country alone, but to the whole civilised world.

"The protection* given by the Convention to the American coasts of each Power may (if it is thought necessary) be extended in terms to the coasts of the Russian Asiatic territory; but in some way or other, if not in the form now presented, the free navigation of Behring Straits, and of the seas beyond them, must be secured to us."

See Appendix.

It would have been of little use securing the right to navigate through Behring Straits unless the right to navigate the sea leading to it was secured, which would not have been the case if the Ukase had remained in full force over Behring Sea.

The frequent references to Behring Straits and the seas beyond them show that there was no doubt in the minds of the British statesmen that, in securing an acknowledgement of freedom of navigation and fishing throughout the Pacific, they had secured it right up to Behring Straits.

That the phrase "Pacific Ocean" in the Treaty included Behring Sea is also shown by the reply of the Russian Government to Governor Etholin in 1842, when he wished to keep American whalers out of Behring Sea:—

"Tikhmenieff."

Appendix.

"The claim to a *mare clausum*, if we wished to advance such a claim in respect to the *northern part of the Pacific Ocean*, could not be theoretically justified. Under Article I of the Convention of 1824, between Russia and the United States, which is still in force, American citizens have a right to fish in all parts of the *Pacific Ocean*. But under Article IV of the same Convention, the ten years' period mentioned in that Article having expired, we have power to forbid American vessels to visit inland seas, gulfs, harbours, and bays for the purposes of fishing and trading with the natives. That is the limit of our rights, and we have no power to prevent American ships from taking whales in the open sea."

See also reply to Governor-General of Eastern Siberia, 1846:—

"We have no right to exclude foreign ships from that part of the great ocean which separates the eastern shore of Siberia from the north-western shore of America," &c.: and the instructions which were finally issued to the Russian cruisers on the 9th December, 1853.

* (i.e.) By the extension of territorial jurisdiction to two leagues, as originally proposed in the course of the negotiations between Great Britain and Russia.

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Writing in 1882 the 8th (20th) May to
Mr. Hoffman, the American Minister at St.
Petersburg, M. de Giers said :—

" Referring to the exchange of communications which has taken place between us on the subject of a Notice published by our Consul at Yokohama relating to fishing, hunting, and to trade in the *Russian waters of the Pacific*, and in reply to the note which you addressed to me, dated the 15th (27th) March, I am now in a position to give you the following information :—

" A Notice of the tenor of that annexed to your note of the 15th March was, in fact, published by our Consul at Yokohama, and our Consul-General at San Francisco is also authorized to publish it.

" This measure refers only to prohibited industries and to the trade in contraband; the restrictions which it established extend strictly to the territorial waters of *Russia only*. It was required by the numerous abuses proved in late years, and which fell with all their weight on the population of our sea-shore and of our islands, whose means of support is by fishing and hunting. These abuses inflicted also a marked injury on the interests of the Company to which the Imperial Government had conceded the monopoly of fishing and hunting (exportation), in islands called the 'Commodore' and the 'Seals.'

" Beyond this new Regulation, of which the essential point is the obligation imposed upon captains of vessels, who desire to fish and to hunt in the *Russian waters of the Pacific* to provide themselves at Vladivostock with the permission or licence of the Governor-General of Oriental Siberia, the right of fishing, hunting, and of trade by foreigners in our territorial waters is regulated by Article 560, and those following, of vol. xii, Part II, of the Code of Laws.

" Informing you of the preceding, I have, &c."

In 1882 a portion of the Behring Sea is referred to by the Russian Government as "Russian waters of the Pacific" and as "our Pacific waters." Witness the following :—

" Notice by A. K. Pelikan, His Royal and Imperial Majesty's Consul, Yokohama, 15th November, 1881.

Papers relating to Behring Sea Fisheries, Washington, 1887, p. 106.

" (Extract.)

" At the request of the local authorities of Behring and other islands, the Undersigned hereby notifies that the Russian Imperial Government publishes for general knowledge the following :—

" 1st. Without a special permit or licence from the Governor-General of Eastern Siberia, foreign vessels are not allowed to carry on trading, hunting, fishing, &c., on the Russian coasts or islands in the Okhotsk and Behring Sea, or on the north-eastern coast of Asia, or within their sea boundary-line."

In the correspondence between the United States and Russia, touching the meaning of this Regulation, it will be seen the Notice is alluded to as "relative to fishing, hunting, and trade in the Russian waters of the Pacific," and as relative to fishing and hunting in "our Pacific waters."

Bancroft writes, in his "History of Alaska" (pp. 19, 20): "The Anadir, which empties into the Pacific." Again: "Thus the Pacific Ocean was first reached by the Russians on the shore of the Okhotsk Sea." And yet again: "The ascent of the Lena brought the Russians to Lake Baikal, and showed them another route to the Pacific, through China by way of the Amoor."

In a "Narrative of a Voyage to the Pacific and Behring Strait, &c.," under command of Captain F. W. Beechey, R.N., in the years 1825-26-27-28, published by authority of the Lords Commissioners of the Admiralty, in London, 1831, there are given the instructions from the Lords Commissioners.

These instructions are full, and though referring to Behring Strait and the Pacific Ocean, do not mention the Sea of Kamtchatka or Behring Sea.

The instructions are dated 1825.

In the discussion of the question of jurisdiction between the United States and Great Britain reference has been made by the United States to the marking of Maps, from which it was insisted that the waters of Behring Sea had been given a name distinct from that of the Pacific Ocean.

From this it was urged that the words "Pacific Ocean" in the Conventions were used with great care, so as to reserve the waters of Behring Sea under the exclusive jurisdiction of Russia.

Was it not that ~~that~~^{the} argument has been seriously pressed, the Maps on the words "north-west coast" would not be referred to in the consideration of the Convention of 1825.

The Legislature of the Territory of Washington, in 1866, referred to "fishing banks known to navigators to exist along the Pacific coast from the Cortes bank to Behring Strait."

So, in 1887, it is found that the American Representative at St. Petersburg informed Mr. Bayard (17th February, 1887) that the Notice already quoted prohibits fishing, &c., in "the Russian Pacific coasts." This corre-

Kamtschatka coast
Suggested

Papers relating
to Behring Sea
Fisheries, Washingt
ton, 1887, p. 118.

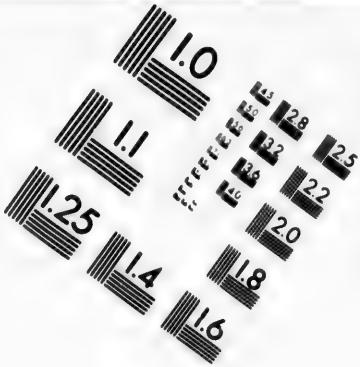
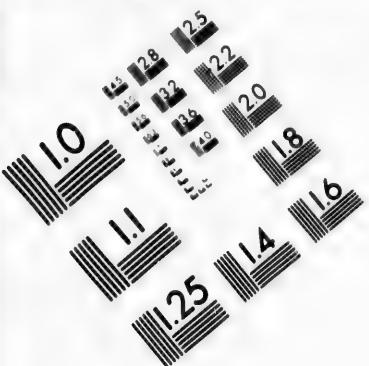
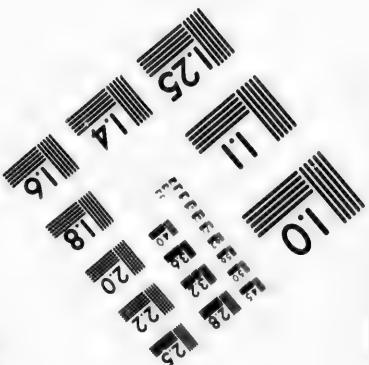
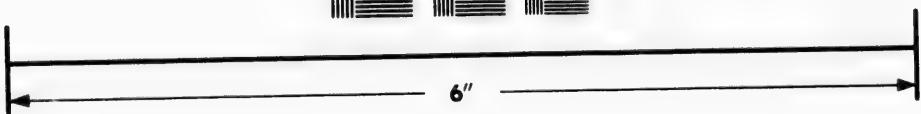
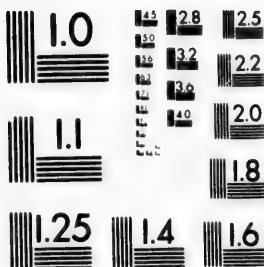
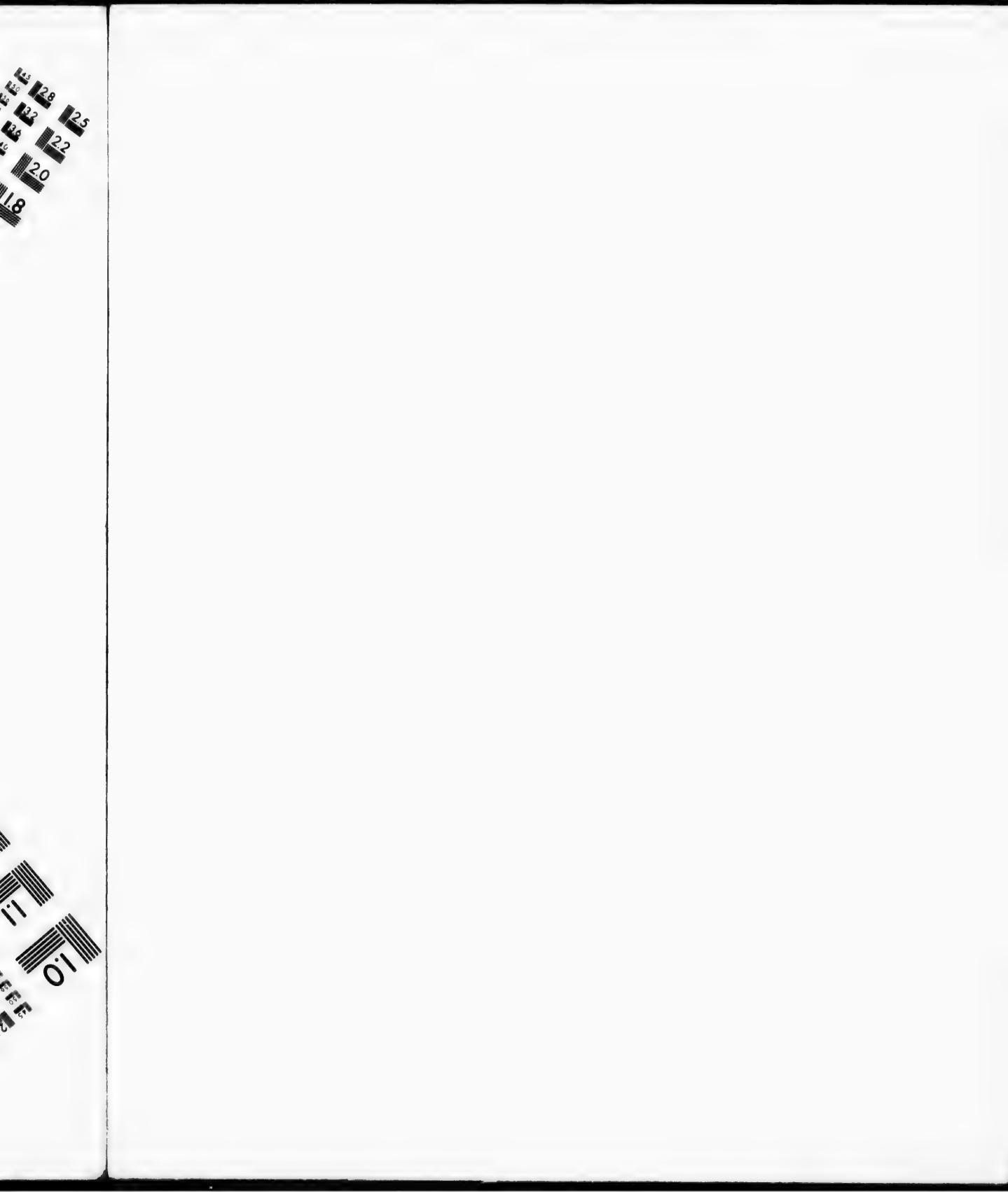


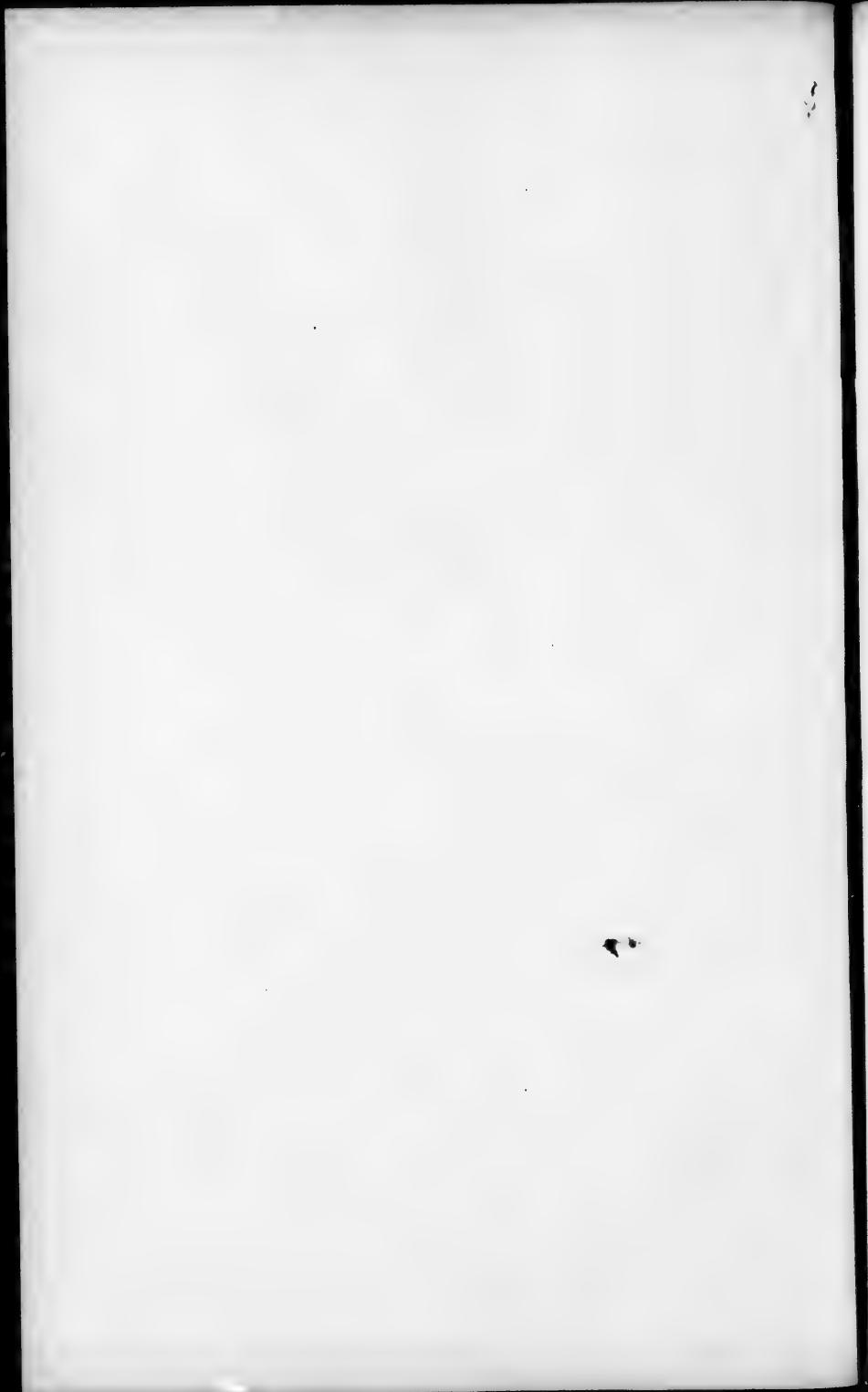
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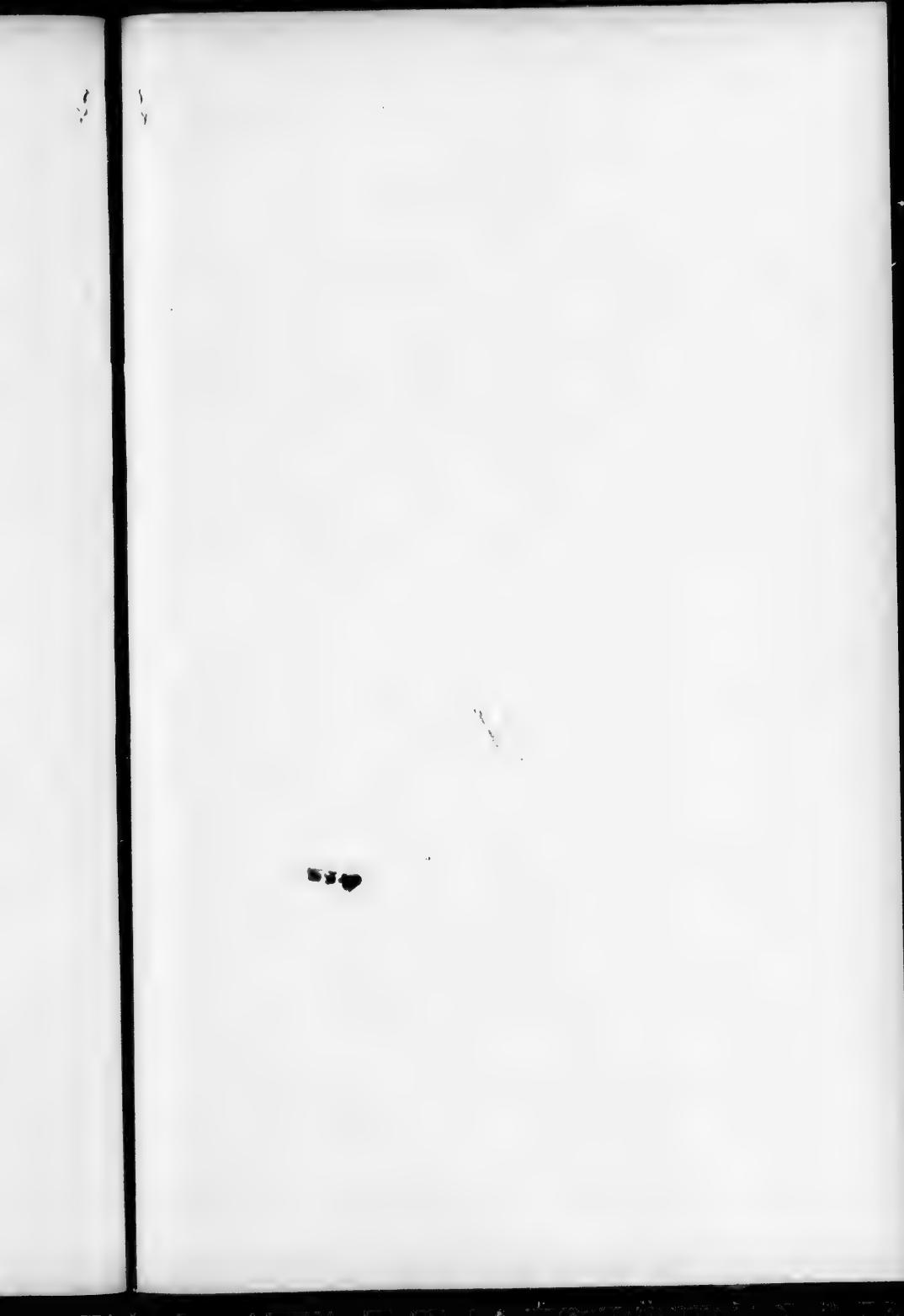


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spondence related to a seizure which had been made in Behring Straits.

Professor H. W. Elliott, of the Smithsonian Institute, who was engaged in the study of the seal islands of Alaska for the United States' Government as late as the year 1880, in his official Report on the seal islands of Alaska remarked, concerning the seals :—

"Their range in the North Pacific is virtually confined to four islands in Behring Sea, viz., St. Paul and St. George, of the true Pribyloff group, and Behring and Copper, of the Commander Islands."

Again, he says :—

"In the North Atlantic no suitable territory for their reception exists, or ever did exist; and really nothing in the North Pacific beyond what we have designated in Behring Sea."

He also describes the rookeries in Behring Sea as "North Pacific rookeries."

And also :—

"Geographically, as well as in regard to natural history, Behring Island is one of the most curious islands in the northern part of the Pacific Ocean."

On various Charts issued by the United States' Hydrographic Office, the usage of Pacific or North Pacific Ocean as including Behring Sea occurs, including the latest and most perfect editions now in actual use.

It is very noteworthy, however, in studying any series of Maps chronologically arranged, that Behring Sea is frequently without any general name, while the adjoining Sea of Okhotsk is in almost every instance clearly designated.

Had the circumstances with respect to the nomenclature of Behring Sea been different, and had that body of water been consistently supplied with a distinctive name on all Maps, it would, however, by no means necessarily follow that this was intended to show that it was not a part of the Pacific Ocean. An ocean may, and in all cases actually does, include numerous seas and gulfs as subordinate divisions. The mere fact that the name of the North Pacific Ocean, or equivalent name in use at different periods, is not usually so engraved upon the Maps as to extend partly over the area of Behring Sea, affords no solid argument for such separation. The name of this ocean is generally found to be

*Report on the Seal Islands of Alaska,
Washington, 1884.*

*H.W.E.
Behring Sea
1880*

engraved, in large characters, upon its widest and most open part somewhere to the south of the 50th parallel, and between that latitude and the Equator. It is almost a physical necessity that it should be so placed in order that it may have due prominence.

With such facts the distinction between Behring Sea and the Pacific Ocean becomes of less importance when the Convention applies to "any part of the ocean commonly called the Pacific Ocean."

The definitions touching the Pacific Ocean, Behring Sea, &c., to be found in gazetteers, dictionaries, and geographies of the world, both of the present and past dates, show that Behring Sea was and is now understood to form an integral part of the Pacific Ocean.

A few of these will suffice.

"*Dictionnaire Géographique Universel*," 1828.

"Mer Pacifique. Il s'étend du nord au sud depuis le Cercle Polaire Arctique, c'est-à-dire, depuis le Détrroit de Behring, qui le fait communiquer à l'Océan Glacial Austral.

"*Précis de la Géographie Universelle*," par Malte-Brun, vol. II., p. 181, éd. 1835.

"L'Océan Pacifique Boréal s'étend depuis le Détrroit de Behring jusqu'au Tropique de Cancer.

Ibid., vol. viii, p. 4.

"Le Détrroit de Behring. A commencer par ce détroit, le Grand Océan (ou Océan Pacifique) forme la limite orientale de l'Asie.

Langlois, "Dictionnaire de Géographie," 1838.

"Behring (détrroit célèbre). Il joint l'Océan Glacial Arctique au Grand Océan.

"*Dictionnaire Universel d'Histoire et de Géographie*," par M. N. Bouillet, Paris, 1842.

"Behring (Détrroit de) à l'extrémité nord-est de l'Asie, sépare ce continent de l'Amérique et l'Océan Glacial Arctique de l'Océan Pacifique.

"*Dictionnaire Géographique et Statistique*," par Adrien Guibert, Paris, 1850.

"Behring (Mer de), partie de l'Océan Pacifique.

"*Grand Dictionnaire de Géographie Universelle*," par M. Boissierelle, Alain, 4 vols., 1855.

"Behring (Détrroit de). Canal du Grand Océan unissant les eaux de l'Océan Pacifique à celles de l'Océan Arctique.

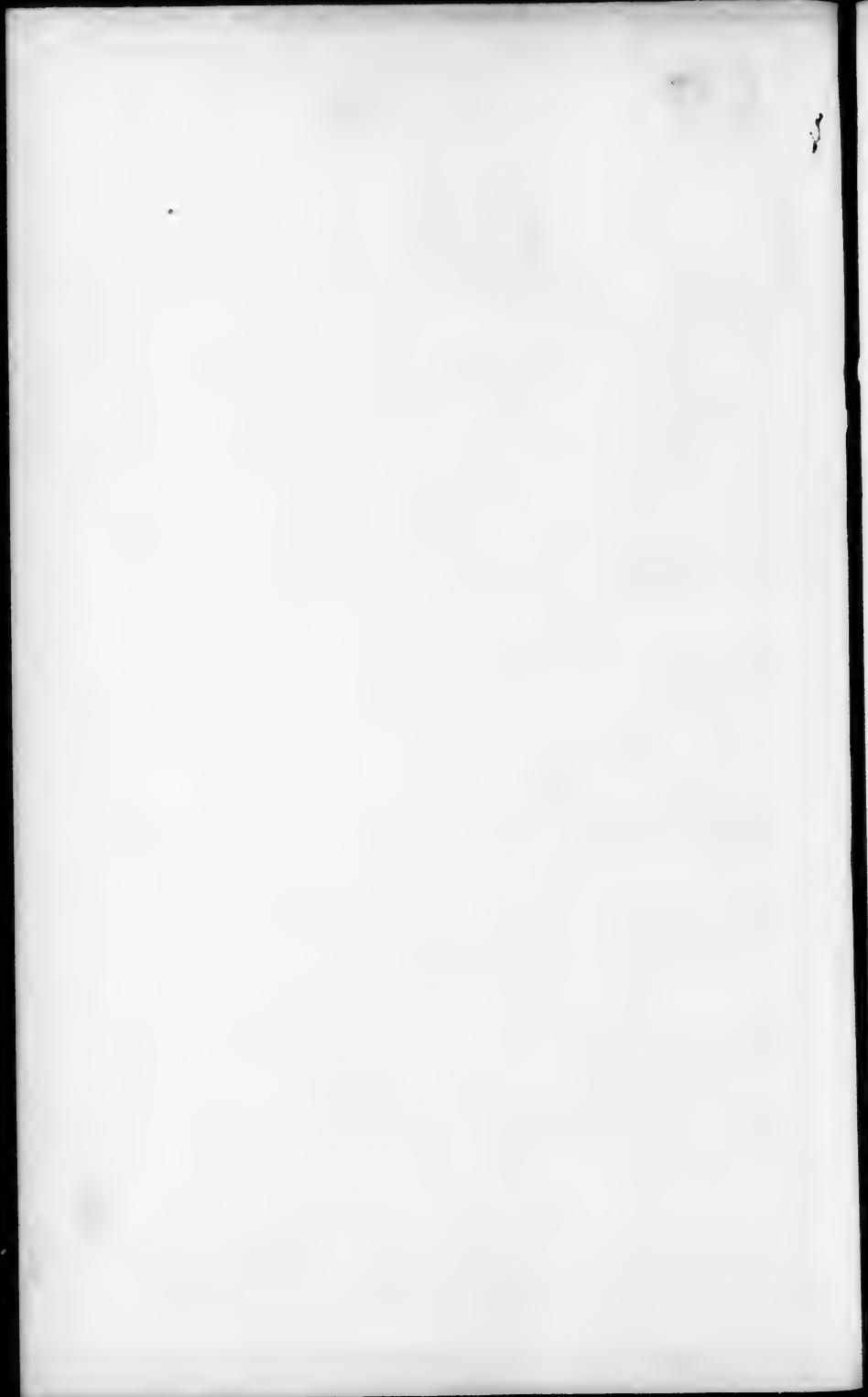
"*Grand Dictionnaire Universel*," par M. P. Laboucane, Paris, 1867.

"Behring (Détrroit de). Canal ou bras de mer unissant les eaux de l'Océan Glacial Arctique à celles de l'Océan Pacifique.

St. Martin, "Nouveau Dictionnaire de Géographie Universelle," Paris, 1879.

"Behring (Détrroit de). Passage qui unit l'Océan Glacial Arctique au Grand Océan."

It is clear that the Honourable Charles Sumner, when proposing to the Senate the adoption of the Treaty of Cession of Alaska, understood the words "North Pacific" in the sense in which these words are defined by the authorities just cited.





In his speech on that occasion, Mr. Sumner thus referred to the waters in question:—

"Sea-otter seems to belong exclusively to the North Pacific. . . . Its present zone is between the parallels of 60° and 65° north latitude on the American and Asiatic coasts, so that its range is very limited." See p. 313, Howard's Report.

Phillimore, in his 3rd edition of the "Law of Nations," vol. i, p. 290, remarks:—

"The contention, advanced for the first time by the United States in this controversy, after an acquiescence of more than sixty-five years in the world's construction of the Treaties of 1824 and 1825, that the phrase 'Pacific Ocean,' as used in those Treaties, was not intended to include, and did not include, the body of water which is now known as the Behring Sea, because the words 'Behring Sea' were not used in either Treaty, is without any foundation, as will be subsequently shown; and yet the Concession is made by the United States that, 'if Great Britain can maintain her position that the Behring Sea at the time of the Treaties with Russia of 1824 and 1825 was included in the Pacific Ocean, the Government of the United States has no well-grounded complaint against her.'"
(Ex. Doc., No. 144, H. R., 51st Congress, 2nd Session, p. 27.)

That the Ukase of 1821 was abandoned in the recognition of the existing right in all nations has been universally and uniformly considered by writers of international law from the date of the Conventions until now.

Wharton, section 32, p. 111:—

"Russia having asserted in 1822 to 1824 an exclusive jurisdiction over the north-west coast waters of America from Behring Strait to the 51st degree of north latitude, this claim was resisted by the United States and Great Britain, and was surrendered in a Convention between Russia and the United States in April 1824 . . . , and in a Convention between Great Britain and Russia in February 1825."
(2 Lyman's "Diplomacy of the United States," chap. 11.)

These Treaties universally accepted until now, as an abandonment of Russia's claim. Wharton, sec. 159, where, also, President Monroe's construction of the Treaty appears.

Davis, p. 44:—

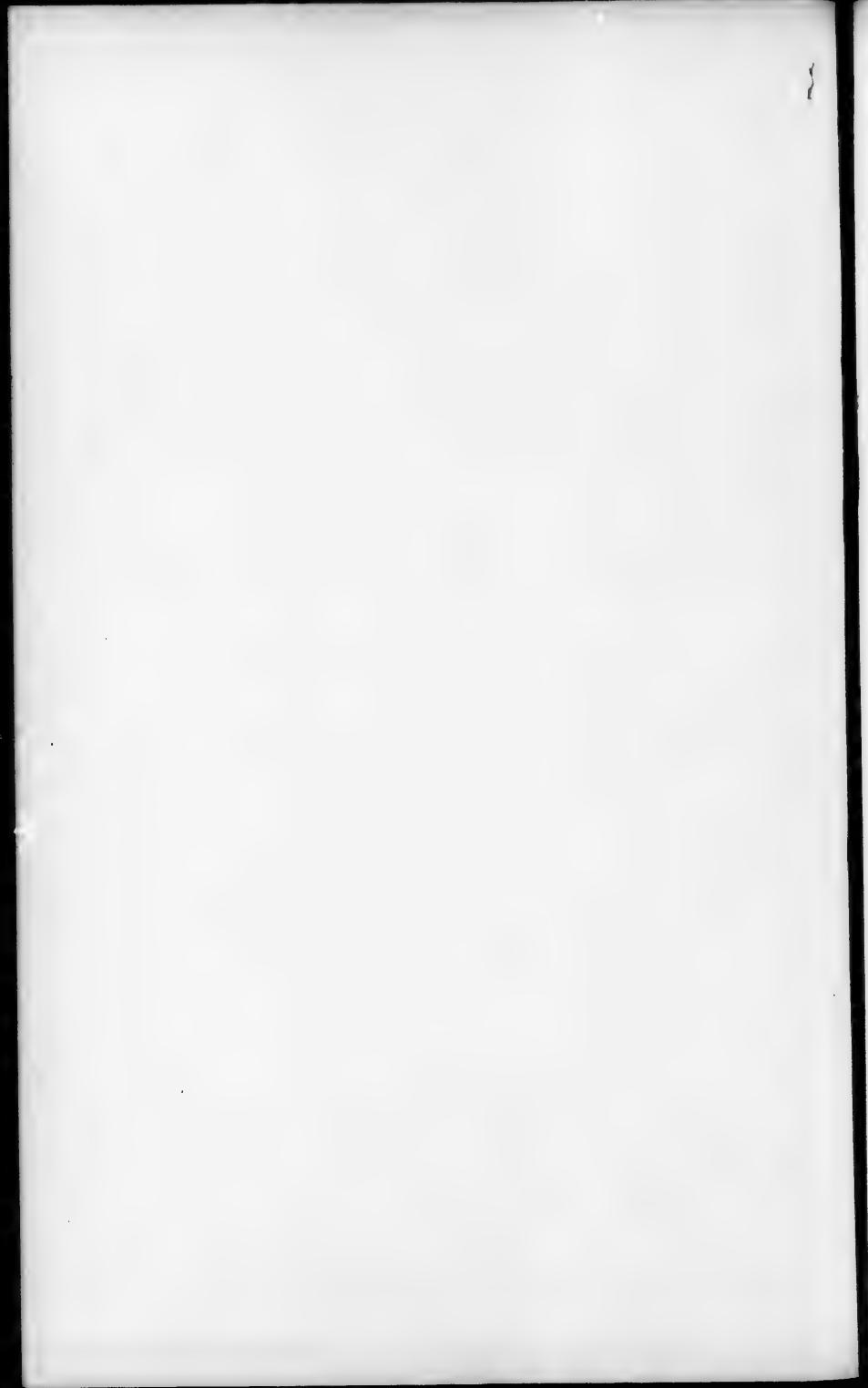
"Russia, in 1822, laid claim to exclusive jurisdiction over that part of the Pacific Ocean lying north of the 51st degree of north latitude, on the ground that it possessed the shores of that sea on both continents beyond that limit, and so had the right to restrict commerce to the coast inhabitants. England and the United States entered vigorous protests against the right claimed by Russia as contrary to the principles of international law, and it was formally withdrawn in 1824."

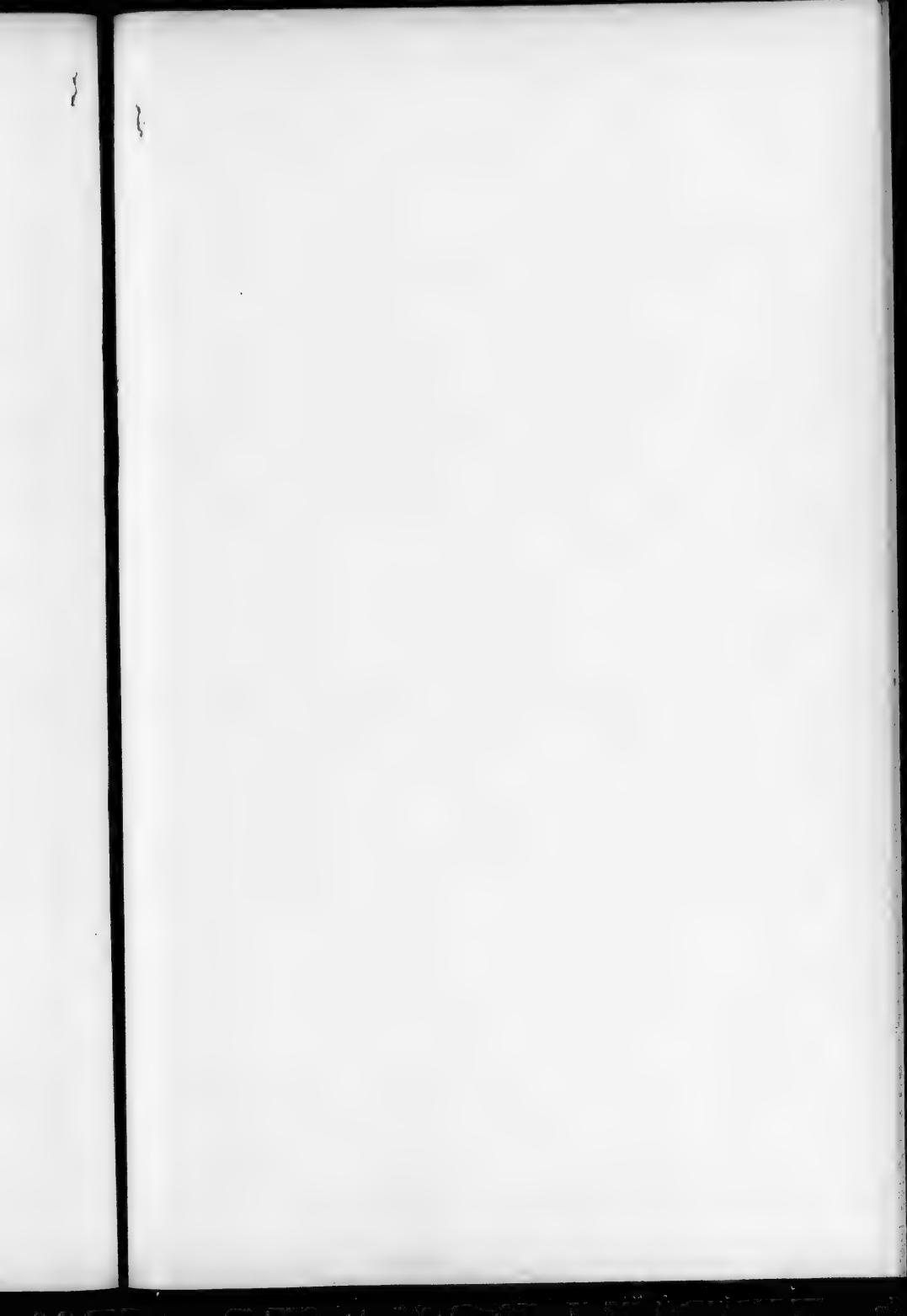
T. S. Woolsey, Professor of International Law at the Yale Law School, in the 6th edition of Woolsey's "Treaties on International Law," says:—

"Russia finally, at a more recent date, based an exclusive claim to the Pacific north of the 51st degree, upon the ground that this part of the ocean was a passage to shores lying exclusively within her jurisdiction; but this claim was resisted by our Government, and withdrawn in the temporary Convention of 1824. A Treaty of the same Empire with Great Britain in 1825 contains similar concessions."

Hall, 3rd edition, 1890, p. 147:—

Note.—A new claim subsequently sprung up in the Pacific, but it was abandoned in a very short time. The Russian Government pretended to be Sovereign over the Pacific north of the 51st degree of latitude, and published an *Ukase* in 1821 prohibiting foreign vessels from approaching within 100 Italian miles of the coasts and islands bordering upon or included in that portion of the ocean. This pretension was resisted by the United States and Great Britain, and was wholly given up by Conventions between the former Powers and Russia in 1824 and 1825. . . . With flagrant inconsistency the United States, since acquiring possession of Alaska, have claimed as attendant upon it, by virtue of cession from Russia, about two-thirds of the Behring Sea, a space of 1,500 miles long and 600 miles wide, and upon the ground of this claim have seized British vessels engaged in seal-fishing. In at least one case the master and mate of a vessel so taken have been fined and imprisoned; the vessel was seized for fishing at a distance of more than 70 miles from land."





CHAPTER V.I.

POINT IV.—*The Cession of 1867 and what passed by it.*

The fourth question or point in the case is as follows :—

Did not all the rights of Russia as to jurisdiction and as to the seal fisheries in Behring Sea east of the water boundary in the Treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that Treaty?

The cession of Alaska took place in 1867. In ^{Treaty of Cession,} ~~1867.~~ that Treaty, ratified by the United States on the 28th May, 1867, Russia ceded to the United States a tract of which—

"The western limit within which the territories and dominion conveyed are contained passes through a point in Behring Straits on the parallel of 65° 30' north latitude, at its intersection by the meridian which is midway between the Islands of Krusenstern, or Ighalook, and the Island of Ratmanoff, or Noonarbook, and proceeds due north, without limitation, into the same Frozen Ocean. The same western limit, beginning at the same initial point, proceeds thence in course nearly south-west, through Behring Straits and Behring Sea, so as to pass midway between the north-west point of the Island of St. Lawrence and the south-east point of Cape Choukotski, to the meridian of 172° west longitude; thence, from the intersection of that meridian, in a south-westerly direction, so as to pass midway between the Island of Attou and the Copper Island of the Kormandonki couplet or group in the North Pacific Ocean, to the meridian of 193° west longitude, so as to include in the territory conveyed the whole of the Aleutian Islands east of that meridian."

In a sea so full of islands as the Behring, a line similar to the one drawn above was necessary for a clear division of the sovereignty of those islands. It avoids an enumeration. There was no grant of sea effected by the delimitation.

Russia took care to grant only the territories with a right of sovereignty within those lines.

No attempt is made to describe by miles and bounds the territory, but it is said to be contained within certain geographical limits.

The "territory" will be found on the continent and in the adjacent islands within those limits.

The following is the Treaty of Cession ← →

{French original}

"Sa Majesté l'Empereur de Toutes les Russies et les États-Unis d'Amérique, désirant raffermir, s'il est possible, la bonne intelligence qui existe entre eux, ont nommé à cet effet, pour leurs Plénipotentiaires, savoir:

"Sa Majesté l'Empereur de Toutes les Russies, le Conseiller Privé Édouard de Stoeckl, son Envoyé Extraordinaire et Ministre Plénipotentiaire aux États-Unis; et

"Le Président des États-Unis, le Sieur William H. Seward, Secrétaire d'Etat;

"Lesquels, après avoir échangé leurs pleins pouvoirs, trouvés en bonne et due forme, ont arrêté et signé les Articles suivants:—

"ARTICLE I.

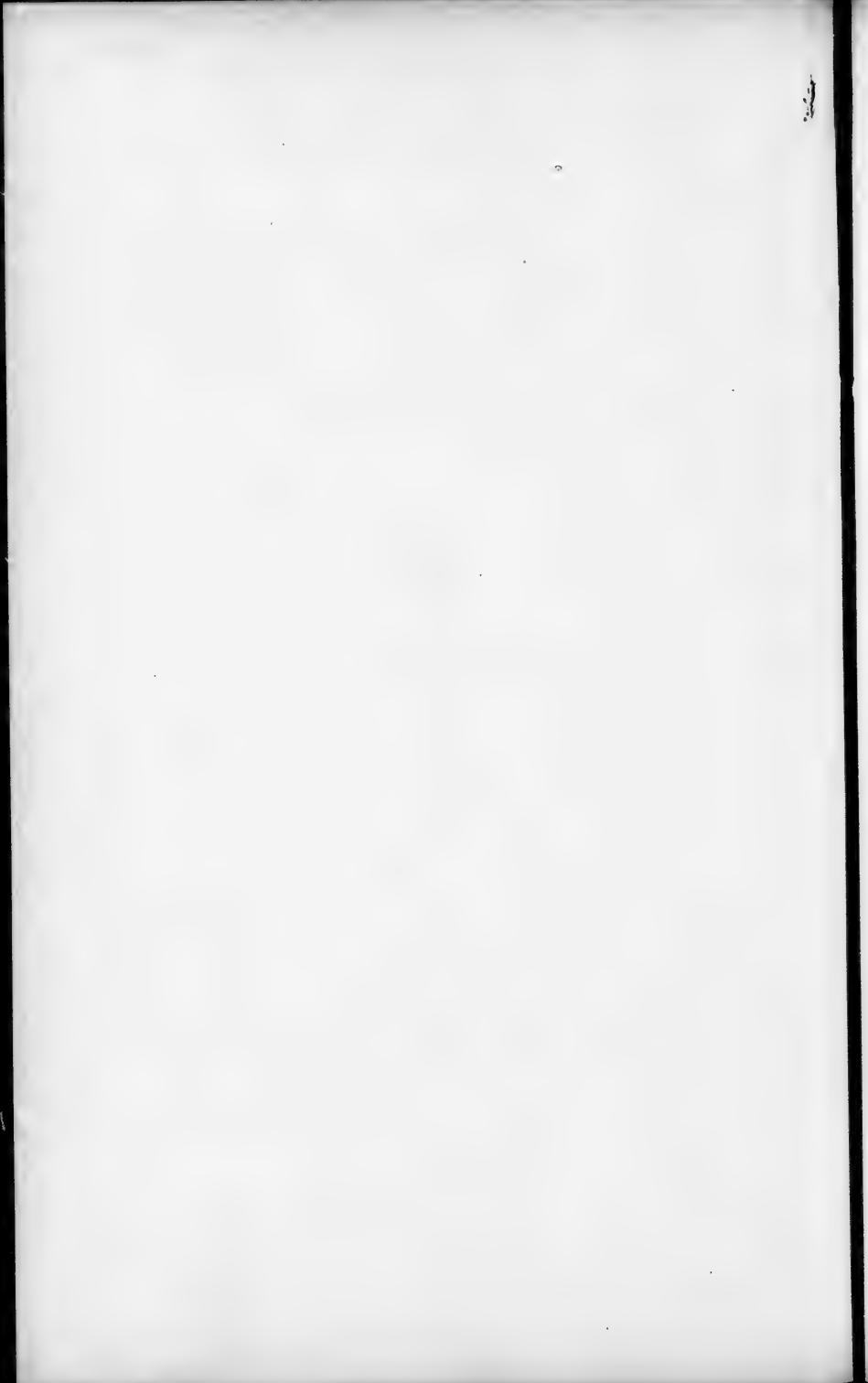
"Sa Majesté l'Empereur de Toutes les Russies s'engage, par cette Convention, à céder aux États-Unis, immédiatement après l'échange des ratifications, tout le territoire avec droit de souveraineté actuellement possédé par Sa Majesté sur le Continent d'Amérique ainsi que les îles contigües, le dit territoire étant compris dans les limites géographiques ci-dessous indiquées, savoir: la limite orientale est la ligne de démarcation entre les possessions Russes et Britanniques dans l'Amérique du Nord, ainsi qu'elle est établie par la Convention conclue entre la Russie et la Grande-Bretagne, le 16 (28) Février, 1825, et définie dans les termes suivants des Articles III et IV de la dite Convention:—

"A partir du point le plus méridional de l'île dite Prince of Wales, lequel point se trouve sous le parallèle du 54° 40' de latitude nord, et entre le 131° et le 133° degré de longitude ouest (méridien de Greenwich), la dite ligne remontera au nord le long de la passe dite Portland Channel, jusqu'au point de la terre ferme, où elle atteint le 56° degré de latitude nord; de ce dernier point la ligne de démarcation suivra la crête des montagnes situées parallèlement à la côte jusqu'au point d'intersection du 141° degré de longitude ouest (même méridien); et finalement, du dit point d'intersection la même ligne méridienne du 141° degré formera dans son prolongement jusqu'à la Mer Glaciale la limite entre les possessions Russes et Britanniques sur le Continent de l'Amérique Nord-Ouest.

"Il est entendu, par rapport à la ligne de démarcation déterminée dans l'Article précédent:—

"1. Que l'île dite Prince of Wales appartiendra toute entière à la Russie; (mais dès ce jour en vertu de cette cession aux États-Unis).

"2. Que partout où la crête des montagnes qui s'étendent dans une direction parallèle à la côte, depuis le 56° degré de latitude nord au point d'intersection du 141° degré de longitude ouest se trouverait à la distance de plus de 10 lieues marines de l'océan, la limite entre les



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possessions Britanniques et la lisière de côte mentionnée ci-dessus comme devant appartenir à la Russie' (c'est-à-dire, la limite des possessions cédées par cette Convention) : 'sera formée par une ligne parallèle aux sinuosités de la côte et qui ne pourra jamais en être éloignée que de 10 lieues marines.'

" La limite occidentale des territoires cédés passe par un point au Détriot de Behring sous le parallèle du 65° 30' de latitude nord à son intersection par le méridien qui sépare à distance égale les Iles Kruzenstern ou Iignalook et l'Ile Ratmanoff ou Noonarbook, et remonte en ligne directe, sans limitation, vers le nord, jusqu'à ce qu'elle se perde dans la Mer Glaciale. Commençant au même point de départ, cette limite occidentale suit de là un cours presque sud-ouest, à travers le Détriot de Behring et la Mer de Behring, de manière à passer à distance égale entre le point nord-ouest de l'Ile Saint-Laurent et le point sud-est du Cap Choukotski jusqu'au méridien 172 de longitude ouest ; de ce point à partir de l'intersection de ce méridien, cette limite suit une direction sud-ouest de manière à passer à distance égale entre l'Ile d'Attou et l'Ile Copper du groupe d'ilots Kormandorski dans l'Océan Pacifique septentrional, jusqu'au méridien de 193° de longitude ouest, de manière à enclaver, dans le territoire cédé, toutes les Iles Aléoutes situées à l'est de ce méridien.

" ARTICLE II.

" Dans le territoire cédé par l'Article précédent à la souveraineté des États-Unis, sont compris le droit de propriété sur tous les terrains et places publiques, terres inoccupées, toutes les constructions publiques, fortifications, casernes, et autres édifices qui ne sont pas propriété privée individuelle. Il est, toutefois, entendu et convenu que les églises, construites par le Gouvernement Russe sur le territoire cédé, resteront la propriété des membres de l'Église Greque Orientale résidant dans ce territoire et appartenant à ce culte. Tous les archives, papiers, et documents du Gouvernement, ayant trait au susdit territoire, et qui y sont maintenant déposés, seront placés entre les mains de l'Agent des États-Unis ; mais les États-Unis fourniront, toujours quand il y aura lieu, des copies légalisées de ces documents au Gouvernement Russe, aux officiers ou sujets Russes qui pourront en faire la demande.

" ARTICLE III.

" Il est réservé aux habitants du territoire cédé le choix de garder leur nationalité et de rentrer en Russie dans l'espace de trois ans ; mais s'ils préfèrent rester dans le territoire cédé, ils seront admis, à l'exception toutefois des tribus sauvages, à jouir de tous les droits, avantages, et immunités des citoyens des États-Unis, et ils seront maintenus et protégés dans le plein exercice de leur liberté, droit de propriété, et religion. Les tribus sauvages seront assujetties aux lois et règlements que les États-Unis pourront adopter, de temps en temps, à l'égard des tribus aborigènes de ce pays.

"ARTICLE IV.

" Sa Majesté l'Empereur de Toutes les Russies nommera, aussitôt que possible, un Agent ou des Agents chargés de remettre, formellement à l'Agent ou aux Agents nommés par les États-Unis, le territoire, la souveraineté, les propriétés, dépendances, et appartenances ainsi cédées et de dresser tout autre acte qui sera nécessaire à l'accomplissement de cette transaction. Mais la cession, avec le droit de possession immédiate, doit toutefois être considérée complète et absolue à l'échange des ratifications, sans attendre la remise formelle.

"ARTICLE V.

" Immédiatement après l'échange des ratifications de cette Convention, les fortifications et les postes militaires qui se trouveront sur le territoire cédé seront remis à l'Agent des États-Unis, et les troupes Russes qui sont stationnées dans le dit territoire seront retirées dans un terme praticable et qui puisse convenir aux deux Parties.

"ARTICLE VI.

" En considération de la susdite cession, les États-Unis s'engagent à payer à la Trésorerie à Washington dans le terme de dix mois après l'échange des ratification de cette Convention, 7,200,000 dollars en or, au Représentant diplomatique ou tout autre Agent de Sa Majesté l'Empereur de Toutes les Russies dûment autorisé à recevoir cette somme. La cession du territoire avec droit de souveraineté faite par cette Convention, est déclarée libre et dégagée de toutes réservations, priviléges, franchises, ou possessions par des Compagnies Russes ou tout autre, légalement constituées ou autrement, ou par des Associations, sauf simplement les propriétaires possédant des biens privés individuels, et la cession ainsi faite transfère tous les droits, franchises, et priviléges appartenant actuellement à la Russie dans le dit territoire et ses dépendances.

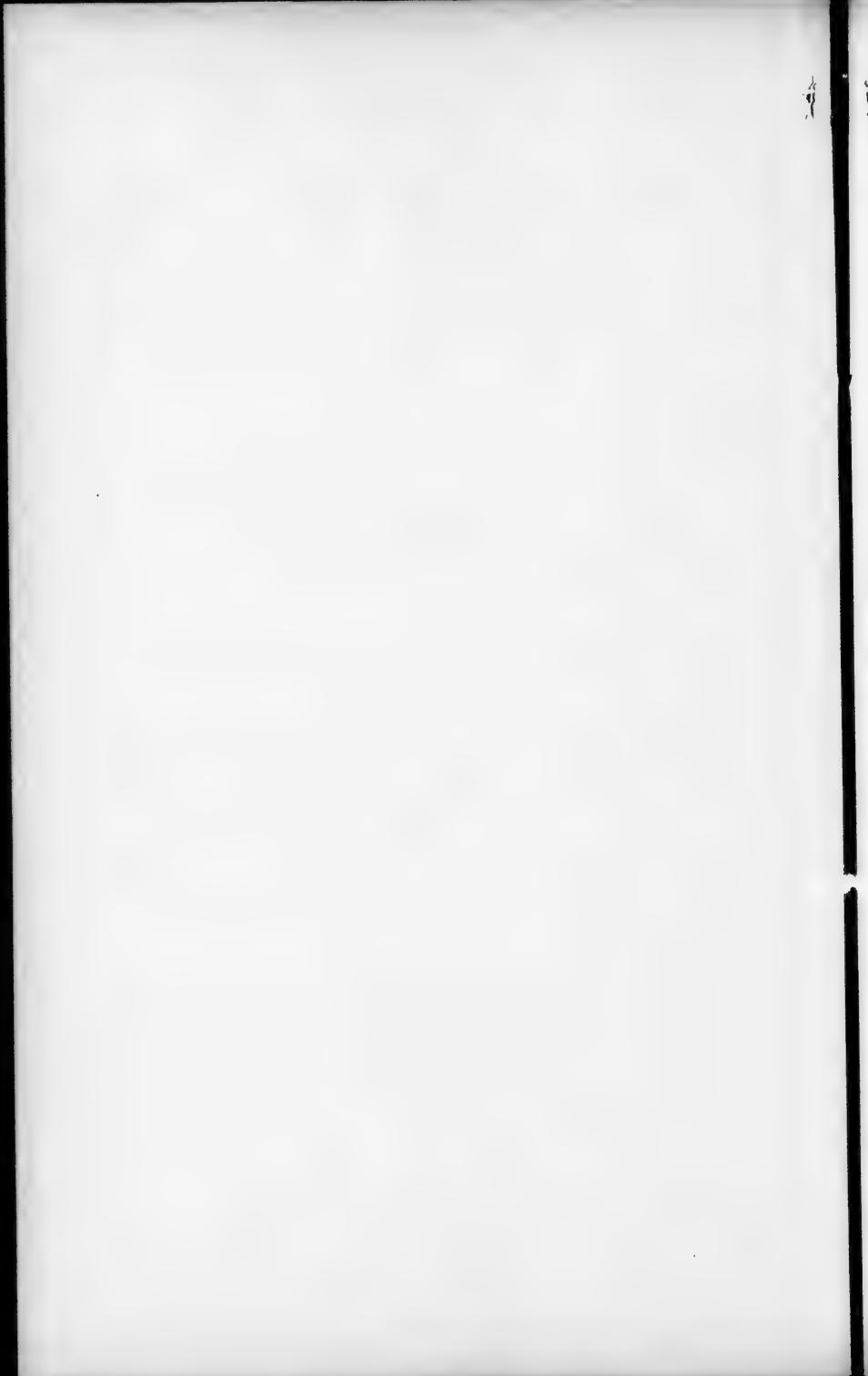
"ARTICLE VII.

" Lorsque cette Convention aura été dûment ratifiée par Sa Majesté l'Empereur de Toutes les Russies d'une part, et par le Président des États-Unis avec l'avis et le consentement du Sénat de l'autre, les ratifications en seront échangées à Washington dans le terme de trois mois à compter du jour de la signature, ou plus tôt si faire se peut.

" En foi de quoi les Plénipotentiaires respectifs ont signé cette Convention et y ont apposé le sceau de leurs armes.

" Fait à Washington, le 18 (30) jour de Mars, de l'an de notre Seigneur 1867.

(L.S.)	"ÉDOUARD DE STOECKL
(L.S.)	"WILLIAM H. SEWARD."



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It will be observed that in none of these Articles is there a reference to any extraordinary or special dominion over the waters of the Behring Sea, nor, indeed, over any other portion of the North Pacific Ocean.

Neither is there a suggestion that any special maritime right existed which could be conveyed.

The language of the Convention is, on the contrary, most carefully confined to "territory with the right of sovereignty actually possessed" by Russia at the date of the cession.

In these Articles the limits of a portion of the Behring Sea are defined to show the boundaries within which the territory ceded "on the Continent of America and in the adjacent islands" is contained.

In Article VI, Russia again makes it emphatic that she is conveying "the rights, franchises, and privileges now belonging" to her in the said "territoire."

The eastern geographical limit is described as the "line of demarcation" between the Russian and British possessions; and no explanation or qualification is superadded. But when the western geographical limit is described, care is taken to repeat the language, introducing the description "within which the territories conveyed are contained," each course carries with it an explanation, and the final clause leaves no room for doubt, and distinctly negatives any implication of an attempt to convey any portion of the high seas—for the said western line is drawn, not so as to embrace any part of the high seas, but, as expressed in the apt language of the Treaty—"SO AS TO INCLUDE IN THE TERRITORY CONVEYED THE WHOLE OF THE ALEUTIAN ISLANDS EAST OF THAT MERIDIAN."

There was a reason for this line of demarcation.

The islands in the Aleutian chain ~~were~~ in the Straits of Behring were not well defined, and could therefore not be used for the delimitation of territory ceded.

~~As a matter~~ In fact, the Aleutian Archipelago included in its general signification islands which were on the Asiatic side of Behring Sea, and far from the Island of Attu, the westernmost island of the Aleutian group intended to be ceded.

"The Aleutian Archipelago is considered by the Russians as consisting of three groups of islands, of which the largest are Unimak, Ushishka, and Umnak; next to

in Article I

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"Memoir, Historical and Political, of the North-west Coast of North America, &c., by Robert Greenhow, Translator and Librarian to the Department of State" [U.S.] Senate, 26th Cong., 1st Sess. [174], 1840.

these are the *Andreanowsky Islands*, among which are *Atscha*, *Tonaga*, and *Kanaga*, with many smaller islands, sometimes called the *Rat Islands*; the most western group is that first called the *Aleutian* or *Aleoutsky Islands*, which are *Attu*, *Mednoi* (or *Copper Island*), and *Behring's Island*" (p. 5).

In the "History of Oregon and California," &c., by the same author, the Commander Islands (Copper and Behring Islands) are again classed among the Aleutian Islands, which are said to be included under two governmental districts by the Russians, the Commander Islands belonging to the western of these districts (p. 38). Greenhow also states that the name "Aleutian Islands" was first applied to Copper and Behring Islands.

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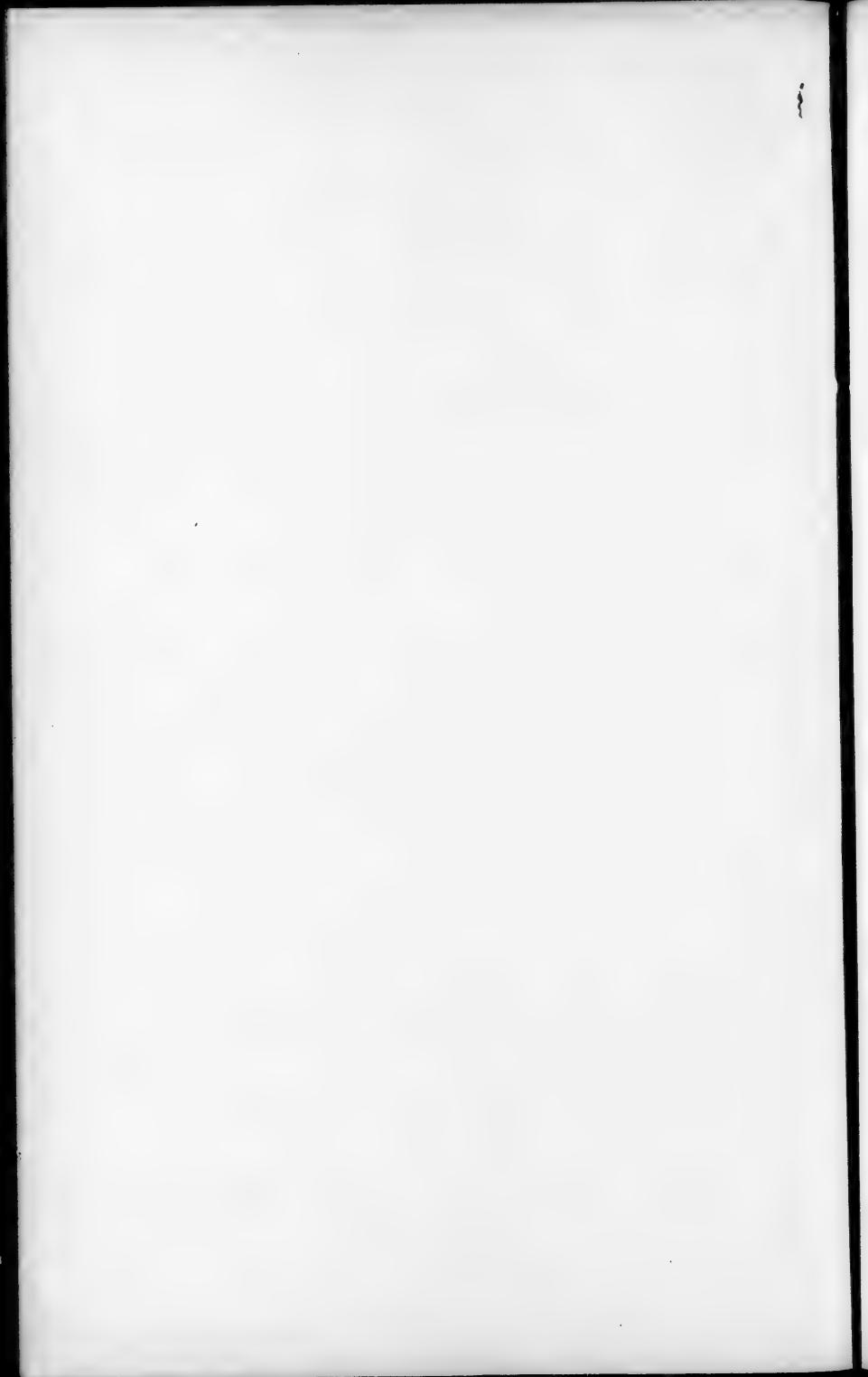
Many Maps examined among those noted in the lists with regard to the nomenclature of Behring Sea, and running from 1784 to about 1830, the title Aleutian Islands is so placed as impliedly to include the Commander Islands, in some it is restricted to a portion of the chain now recognized by that name) See particularly for first-mentioned usage, Map of America by A. Arrowsmith, 1804 (Brit. Mus. Lib. Cat. No. 69810, 15).

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marks*

From the diversity in usage in respect to the name of the Aleutian Islands, though these are now commonly considered to end to the westward at Attou Island, it is obvious that, in defining a general boundary between the Russian and United States' possessions, it might have given rise to grave subsequent doubts and questions to have stated merely that the whole of the Aleutian Islands belonged to the United States. Neither would this have covered the case offered by the various scattered islands to the north of the Aleutian chain proper, while to have enumerated the various islands which often appeared and still sometimes appear on different Maps under alternative names would have been perplexing and unsatisfactory, from the very great number of these to be found in and about Bering Sea.

It was thus entirely natural to define conventionally a general line of division fixed by astronomical positions, and so drawn as according to the best published Maps to avoid touching any known islands.

As showing that in stipulating for a geographical limit of this character Russia did not





take an unnecessary step, even as regards the Arctic Ocean, the action of Captain Hooper, of the United States' revenue cutter "Corwin," in 1881, may be cited. Having reached the island known as Wrangell Land, to the north of the Siberian coast, and ~~within the limits of the Cession~~, he went through the form of hoisting and saluting the flag of the United States there, and rechristened the island "New Columbia" (Cruize of the "Corwin," 1881).

The following is from the "Coast Pilot" of 1869:—

"The following list of the geographical position of places, principally upon the coast of Alaska, has been compiled chiefly from Russian authorities. In its preparation the intention was to introduce all determinations of position that appeared to have been made by actual observation, even when the localities are quite close. In the Archipelago Alexander most of Vancouver's latitudes have been introduced, although in such waters they are not of great practical value.

**Appendix No. 2.
United States'
Coast Survey.
Coast Pilot of
Alaska 1869.
Part I.**

"It is believed the latitudes are generally within 2 miles of the actual position, and in many cases where several observers had determined them independently, the errors may be less than 1 mile. The longitudes of harbours regularly visited by vessels of the Russian-American Company appear to be fairly determined, except toward the western termination of the Aleutian chain, where large discrepancies, reaching 3° of arch, are exhibited by the comparison of results between Russian authorities and the United States Exploring Expedition to the North Pacific in 1855. Positions by different authorities are given in some instances to show these discrepancies. The comparison of latitudes and longitudes at Victoria, Fort Simpson, Sitka, Chilkat, Kodiak, and Unalaska, between English and Russian and the United States' coast survey determinations, exhibit larger errors than might have been expected.

"The uncertainties that exist in the geographical position of many islands, headlands, straits, and reefs, the great dissimilarity of outline and extent of recent examinations of some of the Western Aleutians, the want of reliable data concerning the tides, currents, and winds, the almost total want of detailed descriptions of headlands, reefs, bays, straits, &c., and the circumstantial testimony of the Aleutian fishermen concerning islands visited by them and not laid down upon the Charts, point to the great necessity for an exhaustive geographical reconnaissance of the coast, as was done for the coast of the United States between Mexico and British Columbia."

This is the more obvious, when it is borne in mind that many of the islands in and about Behring Sea are even at the present day very

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imperfectly surveyed, and more or less uncertain in position.

Thus, even the latest United States' Chart of what are now known as the Aleutian Islands (No. 68, published in 1891) are credited chiefly to the "North Pacific Surveying Expedition" under Rogers, which was carried out in the schooner "Fenimore Cooper" in 1855. On sheet 1 of the Map just referred to (embracing the western part of the Aleutian Islands), such notes as the following are found :—

"The latest Russian Charts place Bouldyr Island 10 miles due south of the position given here, which is from a determination by Sumner's method."

"The low islands between Garoloi and Soulakh, excepting the west point of Unalga, are from Russian authorities, which, however, are widely discrepant."

Similarly, in the corresponding British Admiralty Chart (No. 1501) published in 1890 we find the remark :—

"Mostly from old and imperfect British, Russian, and American surveys."

Even on the latest Chart of Bering Sea, published by the United States in 1891, a small islet is shown north of St. Matthew Island, near the centre of the sea, which does not appear on the special Map of St. Matthew Island published in 1875, and which could not be found in 1891.

That the line drawn through Behring Sea between Russian and United States' possessions was thus intended and regarded merely as a ready and definite mode of defining which of the numerous islands in a partially explored sea should belong to either Power, is further shown by a consideration of the northern portion of the same line, which is that first defined in the Treaty. From the initial point in Behring Strait, which is carefully described, the "limite occidentale" of territories ceded to the United States is said to "remonte en ligne droite, sans limitation, vers le nord, jusqu'à ce qu'elle se perd dans la Mer Glaciale," or in the United States' official translation "proceeds due north without limitation into the same Frozen Ocean."

The "geographical limit" in this part of its length runs through an ocean which had at no time been surrounded by Russian territory, and which had never been claimed as reserved by





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Russia in any way, and to which, on the contrary, special stipulations for access had been made in connection with the Anglo-Russian Convention of 1825, and which since 1848 or 1849 has been frequented by whalers and walrus-hunters of various nations, while no single fur-seal has ever been found within it. It is therefore very clear that the geographical limit thus projected could have been intended only to define the ownership of such islands, if any, as might subsequently be discovered in this imperfectly explored ocean; and when, therefore, in the order of the Treaty, it was proceeded to define the course of "the same western limit" from the initial point to the southward and westward across Behring Sea, it is obvious that it continued to possess the same character and value. If intended to have a different signification in Behring Sea, and there to partition dominion over waters, it would have been necessary to specially mention and stipulate this circumstance, which was not done.

It is therefore contended that the Treaty does not purport either expressly or by implication to convey any "dominion in the waters of Behring Sea," and if any dominion in said waters passed by said Treaty it must have passed as an incident or appurtenant to the territory on the continent and in the adjacent islands according to international law and the practice of nations.

Russia's rights "as to jurisdiction and as to the seal fisheries in Behring Sea," referred to in the Point of the Case under consideration, were such as became hers according to international law, from her claims to the possession of the islands and other territory situated in this sea.

Admitting, in the consideration of this question, that Russia's title before 1867 was complete to the coast of Behring Sea and to the islands within those waters, an examination of the principles of international law and the practice of nations will show that her jurisdiction was confined to the distance of 1 marine league or 3 miles from her shores.

The principle of the marine league was in 1875 applied, by Mr. Fish, the Secretary of State, to the waters now in question.

Mr. Fish wrote to the United States' Legation in Russia on the 1st December, 1875:—

"There was reason to hope that the practice, which formerly prevailed with powerful nations, of regarding seas and bays, usually of large extent near their coast, as closed Wharton's
"Digest," p. 106,

to any foreign commerce or fishery not specially licensed by them, was, without exception, a pretension of the past, and that no nation would claim exemption from the general rule of public law, which limits its maritime jurisdiction to 1 marine league from its coast. We should particularly regret if Russia should insist on any such pretension."

In view of the following reference to this subject, from the brief of the United States in the case of the "Thornton" in 1886, already referred to, it is not supposed that the general doctrine will be disputed:—

Wheaton's "International Law,"
vol. i, sec. 32,
pp. 100 and 109.

"Concerning the doctrine of international law establishing what is known as the marine league belt, which extends the jurisdiction of a nation into adjacent seas for a distance of 1 marine league or 3 miles from its shores, and following all the indentations and sinuosities of its coast, there is at this day no room for discussion. It must be accepted as the settled law of nations. It is sustained by the highest authorities, law-writers and jurists. It has been sanctioned by the United States since the foundation of the Government. It was affirmed by Mr. Jefferson, Secretary of State, as early as 1793, and has been reaffirmed by his successors—Mr. Pickering, in 1796; Mr. Madison, in 1807; Mr. Webster, in 1842; Mr. Buchanan, in 1849; Mr. Seward, in 1862, 1863, and 1864; Mr. Fish, in 1875; Mr. Evarts, in 1879 and 1881; and Mr. Bayard, in 1886.

"Sanctioned thus by an unbroken line of precedents covering the first century of our national existence, the United States would not abandon this doctrine if they could; they could not if they would."

And again:—

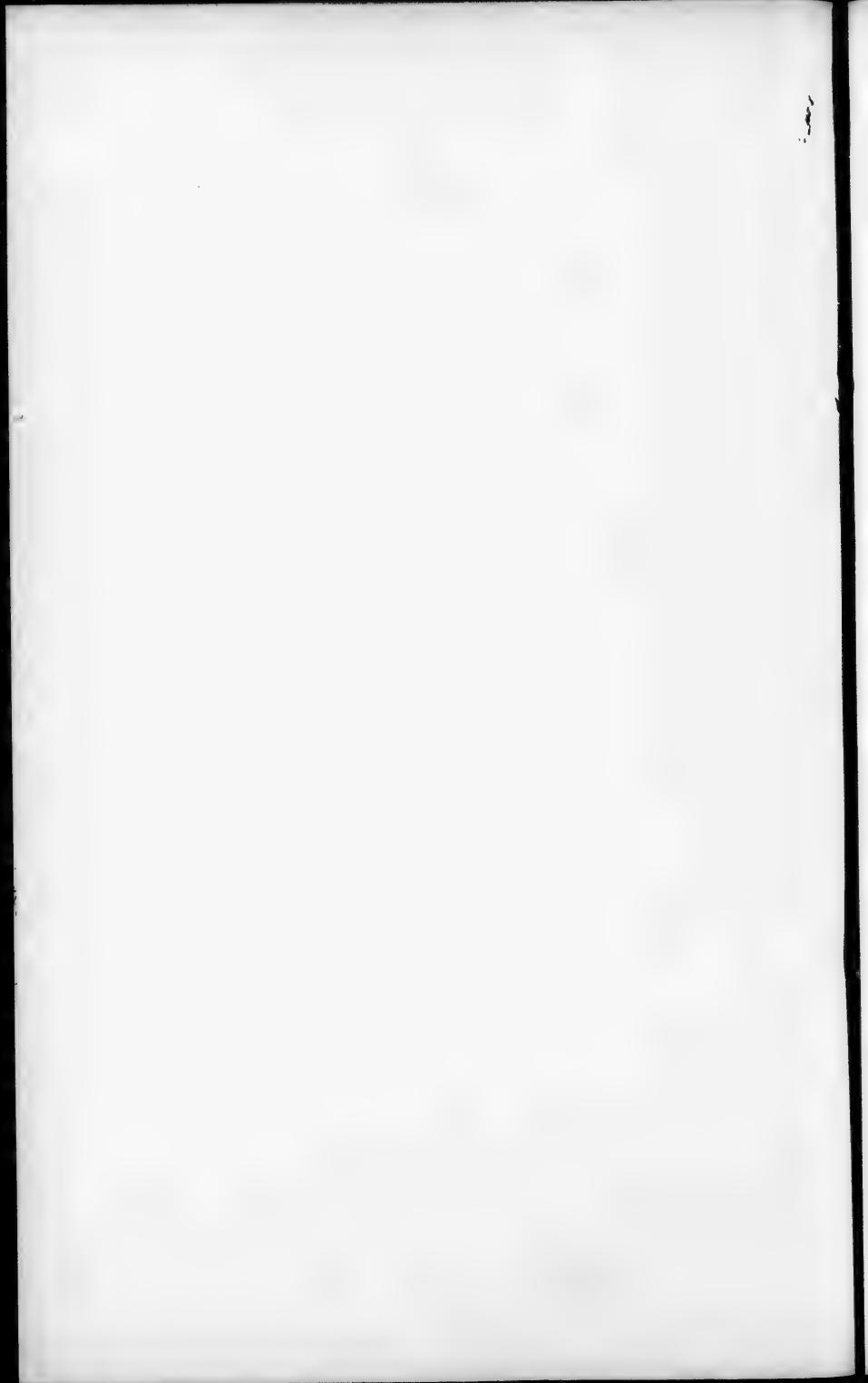
Ibid., pp. 9-100.

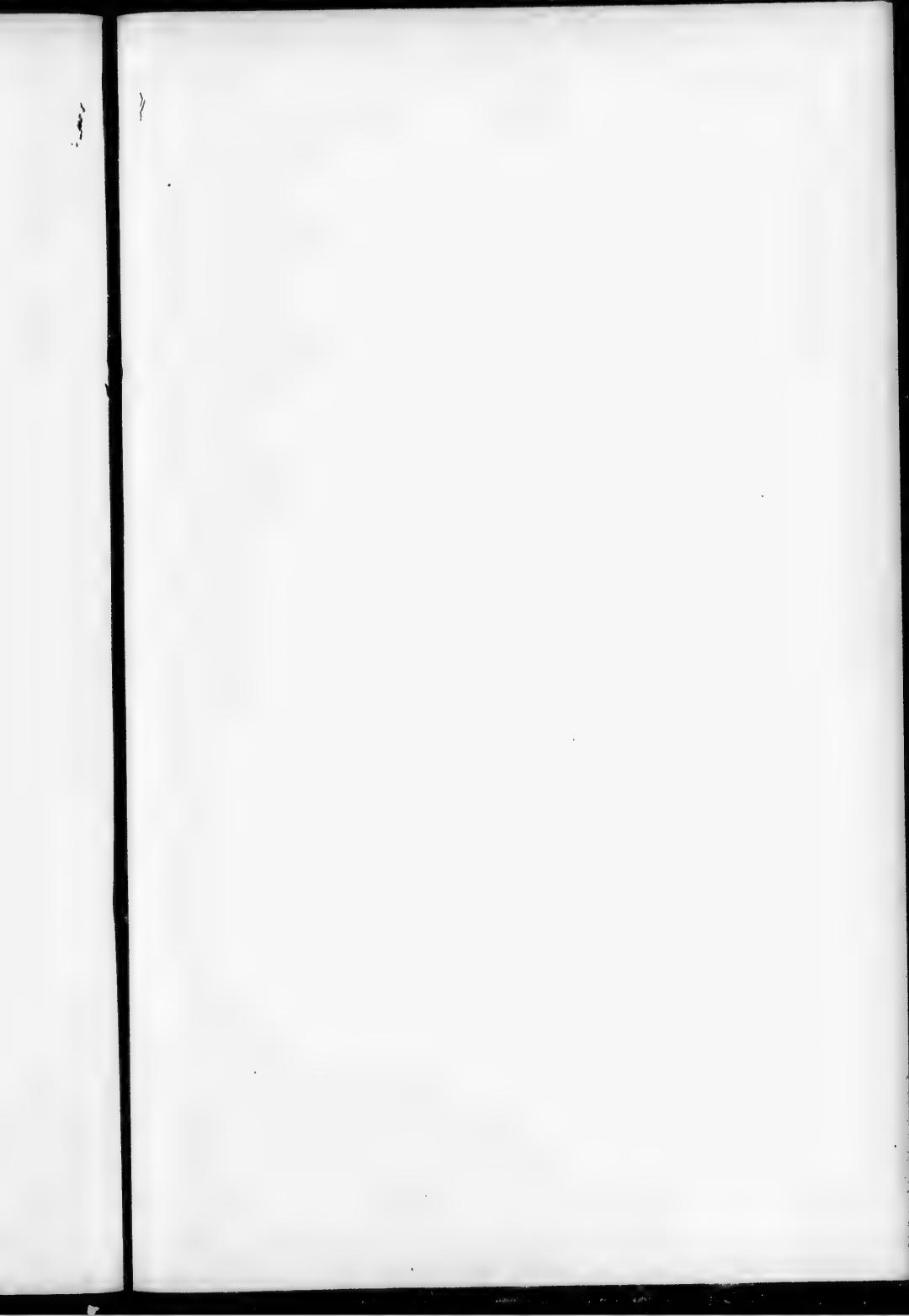
"It thus appears that our Government asserted this doctrine in its infancy. It was announced by Mr. Jefferson as Secretary of State and by the Attorney-General in 1793. Mr. Pickering, Secretary of State in 1796, re-affirms it in his letter to the Governor of Virginia, in the following language: 'Our jurisdiction has been fixed to extend 3 geographical miles from our shores, with the exception of any waters or bays which are so land-locked as to be unquestionably within the jurisdiction of the States, be their extent what they may.'

"Mr. Buchanan, Secretary of State, to Mr. Jordan, in 1849, reiterates this rule in the following language: 'The exclusive jurisdiction of a nation extends to the ports, harbours, bays, mouths of rivers, and adjacent parts of the sea inclosed by headlands.'

"Mr. Seward, in the Senate in 1852, substantially enunciates the same doctrine by declaring that, if we relied alone upon the old rule that only those bays whose entrance from headland to headland do not exceed 6 miles are within the territorial jurisdiction of the adjoining

Ibid., p. 101.





nation, our dominion to all the larger and more important arms of the sea on both our Atlantic and Pacific coasts would have to be surrendered. Our right to jurisdiction over these rests with the rule of international law which gives a nation jurisdiction over waters embraced within its land dominion."

The same position was taken up by the United States in their brief filed with the Halifax Fisheries Commission in 1877.

The Agent of the United States at Halifax, after setting out the various authorities under this head, concluded as follows:—

"The jurisdiction of a State or country over its adjoining waters is limited to 3 miles from low-water mark along its sea-coast, and the same rule applies equally to bays and gulfs whose width exceeds 6 miles from headland to headland. Property in and dominion over the sea can only exist as to those portions capable of permanent possession; that is, of a possession from the land, which possession can only be maintained by artillery. At 1 mile beyond the reach of coast-guns, there is no more possession than in mid-ocean. This is the rule laid down by almost all the writers on international law."

As to inland seas and seas over which empire may extend, the following authorities may be referred to:—

"At present," says Vattel, "Law of Nations," Book 1, ch. xxiii, §§ 289, 291, "the whole space of the sea within cannon-shot of the coast is considered as making a part of the territory; and, for that reason, a vessel taken under the guns of a neutral fortress is not a good prize.

"All we have said of the parts of the sea near the coast may be said more particularly and with much greater reason of the roads, bays, and straits, as still more capable of being occupied, and of greater importance to the safety of the country. But I speak of the bays and straits of small extent, and not of those great parts of the sea to which these names are sometimes given—as Hudson's Bay and the Straits of Magellan—over which the Empire cannot extend, and still less a right of property. A bay whose entrance may be defended may be possessed and rendered subject to the laws of the Sovereign; and it is of importance that it should be so, since the country may be much more easily insulted in such a place than on the coast, open to the winds and the impetuosity of the waves."

Professor Bluntschli, in his "Law of Nations," Book 4, §§ 302, 309, states the rule in the same way:—

"When the frontier of a State is formed by the open sea, the part of the sea over which the State can from the

shore make its power respected—i.e., a portion of the sea extending as far as a cannon-shot from the coast—is considered as belonging to the territory of that State. Treaties or agreements can establish other and more precise limits."

Note.—The extent practised of this sovereignty has remarkably increased since the invention of far-shooting cannon. This is the consequence of the improvements made in the means of defence, of which the State makes use. The sovereignty of States over the sea extended originally only to a stone's-throw from the coast; later to an arrow-shot; fire-arms were invented, and by rapid progress we have arrived to the far-shooting cannon of the present age. But still we preserve the principle: "*Terrae dominium finitur, ubi finitur armorum vis.*"

"Within certain limits, there are submitted to the sovereignty of the bordering State:—

"(a.) The portion of the sea placed within a cannon-shot of the shore.

"(b.) Harbours.

"(c.) Gulfs.

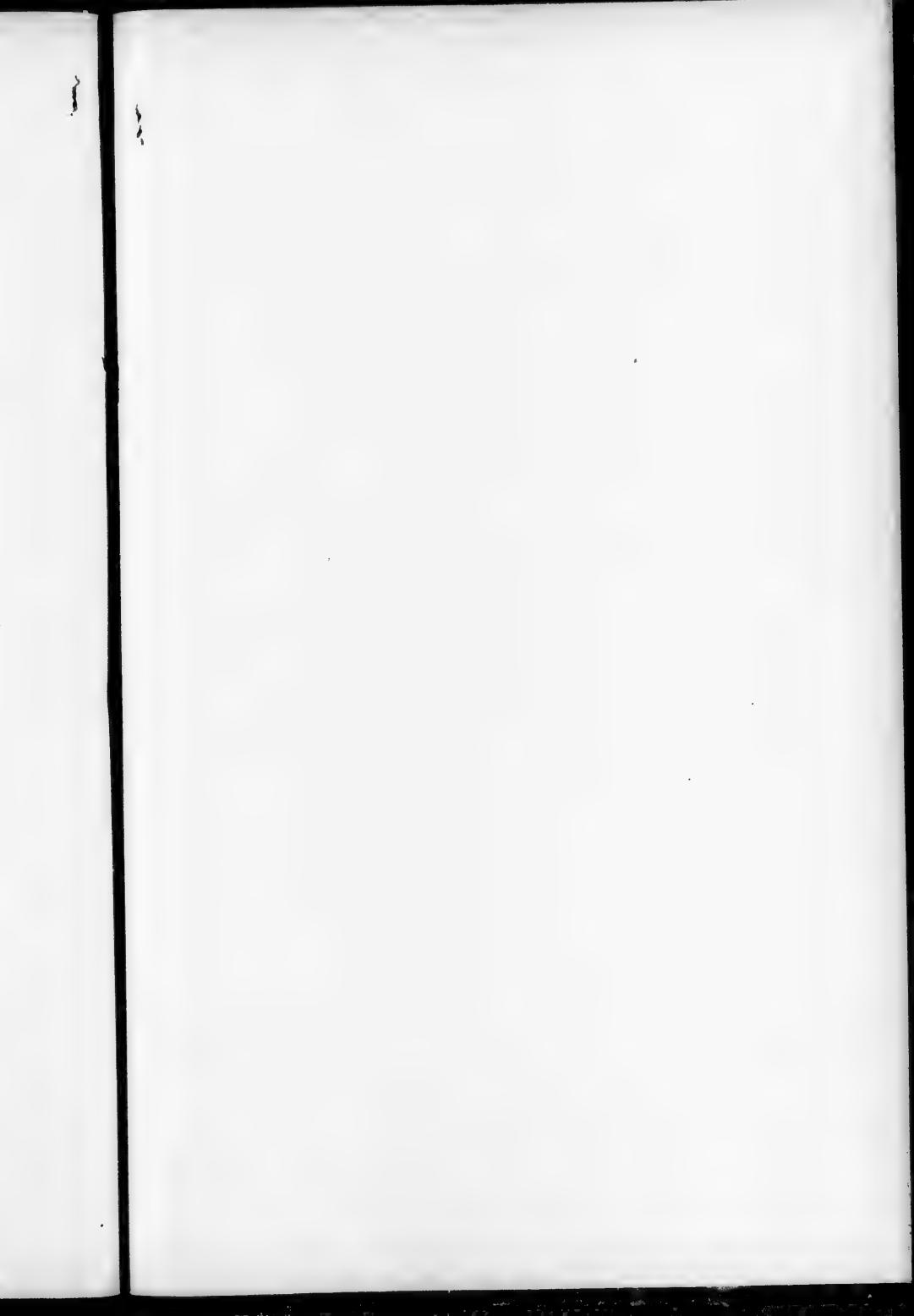
"(d.) Roadstead."

Note.—Certain portions of the sea are so nearly joined to the *terra firma*, that, in some measure at least, they ought to form a part of the territory of the bordering State; they are considered as accessories to the *terra firma*. The safety of the State and the public quiet are so dependent on them that they cannot be contented, in certain gulfs, with the portion of the sea lying under the fire of cannon from the coast. These exceptions from the general rule of the liberty of the sea can only be made for weighty reasons, and when the extent of the arm of the sea is not large; thus, Hudson's Bay and the Gulf of Mexico evidently are a part of the open sea. No one disputes the power of England over the arm of the sea lying between the Isle of Wight and the English const, which could not be admitted for the sea lying between England and Ireland; the English Admiralty has, however, sometimes maintained the theory of "narrow seas;" and has tried, but without success, to keep for its own interest, under the name of "King's Chambers," some considerable extents of the sea.

Klüber "*Droit des Gens Modernes de l'Europe* (Paris, édition 1831)," vol. i, p. 216:—

"Au territoire maritime d'un État appartiennent les districts maritimes, ou parages susceptibles d'une possession exclusive, sur lesquels l'État a acquis (par occupation ou convention) et continué la souveraineté. Sont de ce nombre: (1) les parties de l'océan qui avoisinent le territoire continental de l'État, du moins, d'après l'opinion presque généralement adoptée, autant qu'elles se trouvent sous la portée du canon qui serait placé sur le rivage; (2) les parties de l'océan qui s'étendent dans le territoire





continental de l'État, si elles peuvent être gouvernées par le canon des deux bords, ou que l'entrée seulement en peut être défendue aux vaisseaux (golfs, baies, et cales); (3) les détroits qui séparent deux continents, et qui également sont sous la portée du canon placé sur le rivage, ou dont l'entrée et la sortie peuvent être défendues (détroit, canal, bosphore, sonde). Sont encore du même nombre; (4) les golfs, détroits, et mers avoisinant le territoire continental d'un État, lesquels, quoiqu'ils ne sont pas entièrement sous la portée du canon, sont néanmoins reconnus par d'autres Puissances comme mer fermée; c'est-à-dire, comme soumis à une domination, et, par conséquent, inaccessibles aux vaisseaux étrangers qui n'ont point obtenu la permission d'y naviguer."

Ortolan, in his "Diplomatie de la Mer," pp. 145, 153 (édition 1864), says:—

"On doit ranger sur la même ligne que rades, et les portes, les golfs, et les baies, et tous les enfoncements connus sous d'autres dénominations, lorsque ces enfoncements, formés par les terres d'un même État, ne dépassent pas en largeur la double portée du canon, ou lorsque l'entrée peut en être gouvernée par l'artillerie, ou qu'elle est défendue naturellement par des îles, par des banes, ou par des roches. Dans tous ces cas, en effet, il est vrai de dire que ces golfs ou ces baies sont en la puissance de l'État maître du territoire qui les enserre. Cet État en a la possession: tous les raisonnements que nous avons fait à l'égard des rades et des ports peuvent se répéter ici. Les bords et rivages de la mer qui baigne les côtes d'un État sont les limites maritimes *naturelles* de cet État. Mais pour la protection, pour la défense plus efficace de ces limites naturelles, la coutume générale des nations, d'accord avec beaucoup de Traités publics, permettre [sic] tracer sur mer, à une distance convenable des côtes, et suivant leurs contours, une ligne imaginaire qui doit être considérée comme la frontière maritime artificielle. Tout bâtiment qui se trouve à terre de cette ligne est dit être *dans les eaux* de l'État dont elle limite le droit de souveraineté et de juridiction."

~~The Behring Sea can be brought under the head of neither strait nor marginal belt. In that it is not entirely surrounded by land, it falls short of the requisites of an enclosed sea. For not only is the Behring Strait 36 miles wide and the distance between many of the islands forming the southern boundary of this sea far in excess of that, but the distance between the last island of the Aleutian chain and the nearest Russian island of the Commander group is 183 miles.~~

Again, regarded as a bay or gulf, the Behring Sea fails to enter the category of closed seas. For waiving all physico-geographical objections

*or closed /
and hence does not fit in*

to such a classification, there still remains to its character of closed sea the insuperable objection of impossibility of possession.

Under the clauses of the Convention of the 8th February, 1853, the case of the "Washington" came before the Joint Commission for settlement of claims in London, and on the disagreement of the Commissioners was decided by Mr. Joshua Bates in favour of the United States. In his decision he said :—

"The question turns, so far as relates to the Treaty stipulations, on the meaning given to the word 'bays' in the Treaty of 1783. By that Treaty, the Americans had no right to dry and cure fish on the shores and *bays* of Newfoundland; but they had that right on the shores, coasts, *bays, harbours, and creeks* of Nova Scotia; and, as they must land to cure fish on the shores, bays, and creeks, they were evidently admitted to the shores of the *bays, &c.* By the Treaty of 1818, the same right is granted to cure fish on the coasts, bays, &c., of Newfoundland; but the Americans relinquished that right, and the right to fish within 3 miles of the coasts, *bays, &c.* of Nova Scotia. Taking it for granted that the framers of the Treaty intended that the word 'bay' or 'bays' should have the same meaning in all cases, and no mention being made of headlands, there appears no doubt that the 'Washington,' in fishing 10 miles from the shore, violated no stipulations of the Treaty.

"It was urged on behalf of the British Government that by 'coasts,' 'bays,' &c., is understood an imaginary line drawn along the coast from headland to headland, and that the jurisdiction of Her Majesty extends 3 marine miles outside of this line; thus closing all the bays on the coast or shore, and that great body of water, called the Bay of Fundy, against Americans and others, making the latter a British bay. This doctrine of the headlands is new, and has received a proper limit in the Convention between France and Great Britain of the 2nd August, 1839; in which 'it is agreed that the distance of 3 miles, fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries, shall, with respect to bays the mouths of which do not exceed 10 miles in width, be measured from a straight line drawn from headland to headland.'

"The Bay of Fundy is from 65 to 75 miles wide and 130 to 140 miles long; it has several bays on its coast; thus the word 'bay,' as applied to this great body of water, has the same meaning as that applied to the Bay of Biscay, the Bay of Bengal, over which no nation can have the right to assume sovereignty. One of the headlands of the Bay of Fundy is in the United States, and ships bound to Passamaquoddy must sail through a large space of it. The islands of Grand Manan (British) and Little Manan (American) are situated nearly on a line from headland to

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headland. These islands, as represented in all geographies, are situated in the Atlantic Ocean. The conclusion is therefore in my mind irresistible that the Bay of Fundy is not a British bay, nor a bay within the meaning of the word as used in the Treaties of 1783 and 1818."

The Agent for the United States before the Halifax Fisheries Commission, 1877, quotes this decision, and adds the following note :—

"This Convention between France and Great Britain extended the headland doctrine to bays 10 miles wide; thus going beyond the general rule of international law, according to which no bays are treated as within the territorial jurisdiction of a State which are more than 6 miles wide on a straight line measured from one headland to the other."

The Russian claim to extraordinary jurisdiction was expressly founded on a supposed right to hold the Pacific as *mare clausum*, because that nation claimed the territory on both sides. If this claim had been well founded the Treaty of 1867 destroyed it, since the sea was no longer shut in or surrounded by the territory of one nation :—

"Un droit exclusif de domaine et de souveraineté de la part d'une nation sur une telle mer n'est incontestable qu'autant que cette mer est *totalement enclavée* dans ce territoire de telle sorte qu'elle en fait partie intégrante, et qu'elle ne peut absolument servir de lieu de communication et de commerce qu'entre les seuls citoyens de cette nation,' or, in the words of Sir Travers Twiss, 'is entirely inclosed by the territory of a nation, and has no other communication with the ocean than by a channel, of which that nation may take possession.' ('Rights and Duties of Nations in time of Peace,' p. 174.)"

Ortolan, "Règles Internationales et Diplomatique de la Mer," vol. i, p. 147.

So Halleck says :—

"21. It is generally admitted that the territory of a State includes the seas, lakes, and rivers entirely inclosed within its limits. Thus, so long as the shores of the Black Sea were exclusively possessed by Turkey, that sea might with propriety be considered as a *mare clausum*; and there seemed no reason to question the right of the Ottoman Porte to exclude other nations from navigating the passage which connects it with the Mediterranean both shores of this passage being also portions of the Turkish territory. But when Turkey lost a part of her possessions bordering upon this sea, and Russia had formed her commercial establishments on the shores of the Euxine, both that Empire and other Maritime Powers became entitled to participate in the commerce of the Black Sea, and consequently to the free navigation of the

Halleck's International Law,
vol. i, cap. 6,
pp. 143-145.

Dardanelles and the Bosphorus. This right was expressly recognized by the Treaty of Adrianople in 1829.

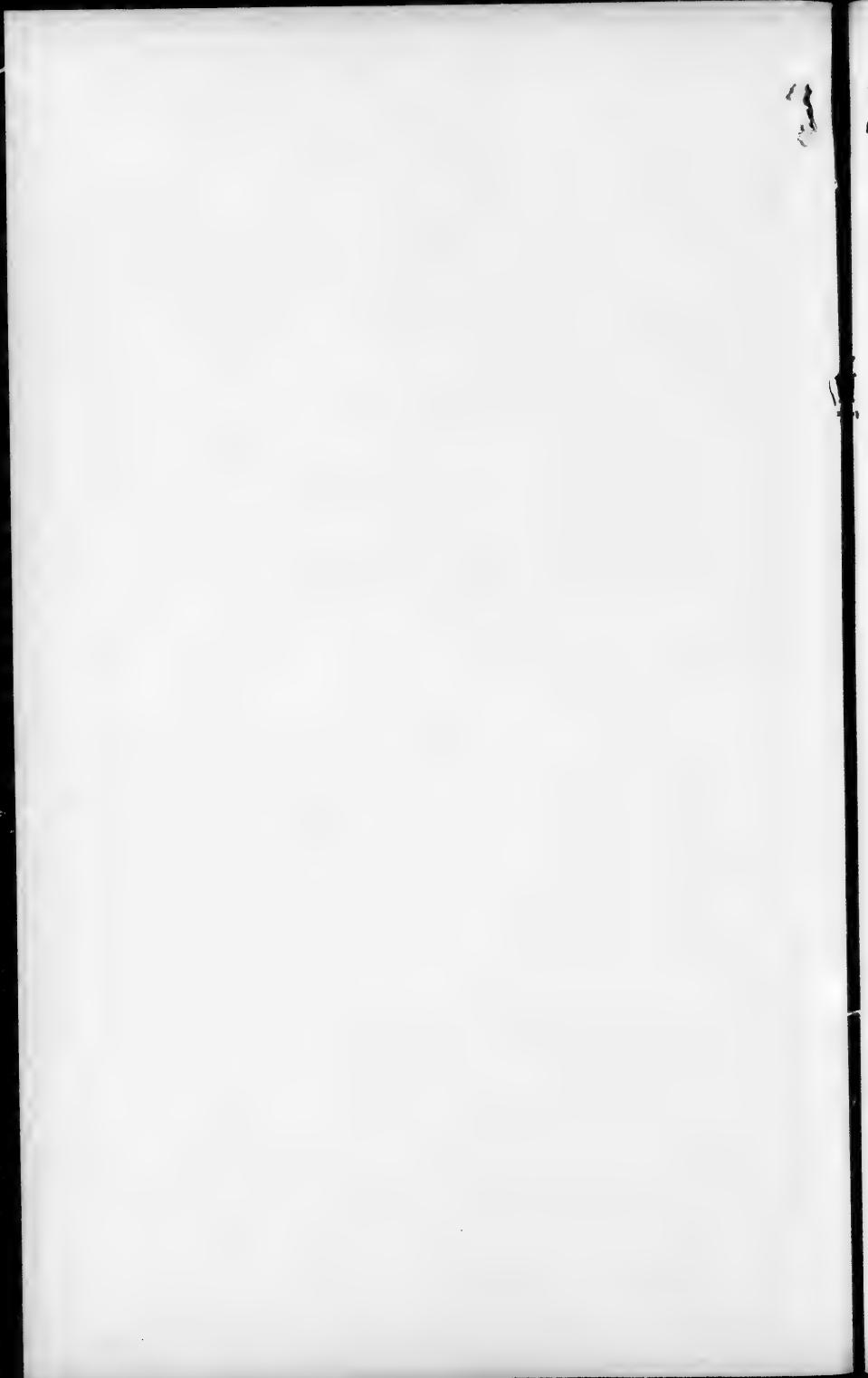
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" 22. The great inland lakes and their navigable outlets are considered as subject to the same rule as inland seas; where inclosed within the limits of a single State, they are regarded as belonging to the territory of that State; but if different nations occupy their borders, the rule of *mare clausum* cannot be applied to the navigation and use of their waters."

Professor James B. Angell, one of the United States' Plenipotentiaries in the negotiation of the Fisheries Treaty at Washington in 1888, and an eminent jurist in an article entitled "American Rights in Behring Sea," in "The Forum" for November 1889, wrote:—

" Can we sustain a claim that Behring Sea is a closed sea, and so subject to our control? It is, perhaps, impossible to frame a definition of a closed sea which the publicists of all nations will accept. Vattel's closed sea is one "entirely inclosed by the land of a nation, with only a communication with the ocean by a channel of which that nation may take possession." Hautefeuille substantially adopts this statement, asserting more specifically, however, that the channel must be narrow enough to be defended from the shores. Perls, one of the more eminent of the later German writers, practically accepts Hautefeuille's definition. But so narrow a channel or opening as that indicated by the eminent French writer can hardly be insisted on. Probably, most authorities will regard it as a reasonable requirement that the entrance to the sea should be narrow enough to make the naval occupation of it easy or practicable. We, at least, may be expected to prescribe no definition which would make the Gulf of St. Lawrence a closed sea.

" Behring Sea is not inclosed wholly by our territory. From the most western island in our possession to the nearest point on the Asiatic shore is more than 300 miles. From our most western island (Atou) to the nearest Russian island (Copper Island) is 183 miles. The sea from east to west measures about 1,100 miles, and from north to south fully 800 miles. The area of the sea must be at least two-thirds as great as that of the Mediterranean, and more than twice that of the North Sea. The Straits of Gibraltar are less than 9 miles wide. The chief entrance to the Gulf of St. Lawrence, which is entirely surrounded by British territory, is only about 50 miles in width. Behring Sea is open on the north by the straits, 36 miles wide, which form a passage way to the Arctic Ocean. On what grounds and after what modern precedent we could set up a claim to hold this great sea, with its wide approaches, as a *mare clausum*, it is not easy to see."



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Dane, in a note to Wheaton's "Elements,"
says:—

"The only question now is, whether a given sea or ~~See~~ Halleck,
sound is, in fact, as a matter of politico-physical geography,
within the exclusive jurisdiction of one nation. The claim
of several nations, whose borders surround a large open
sea, to combine and make it *mare clausum* against the
rest of the world, cannot be admitted. The making of
such a claim to the Baltic was the infirmity of the position
taken up by the Armed Neutrality in 1780 and 1800, and
in the Russian Declaration of War against England in
1807."

CHAPTER VIII.

POINT V.—*Protection of or Property in Seals.*

Has the United States any right, and, if so, what right of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea, when such seals are found outside the ordinary 3-mile limit?

The claim advanced in this question is not only new in the present discussion, but is without precedent in the world's history.

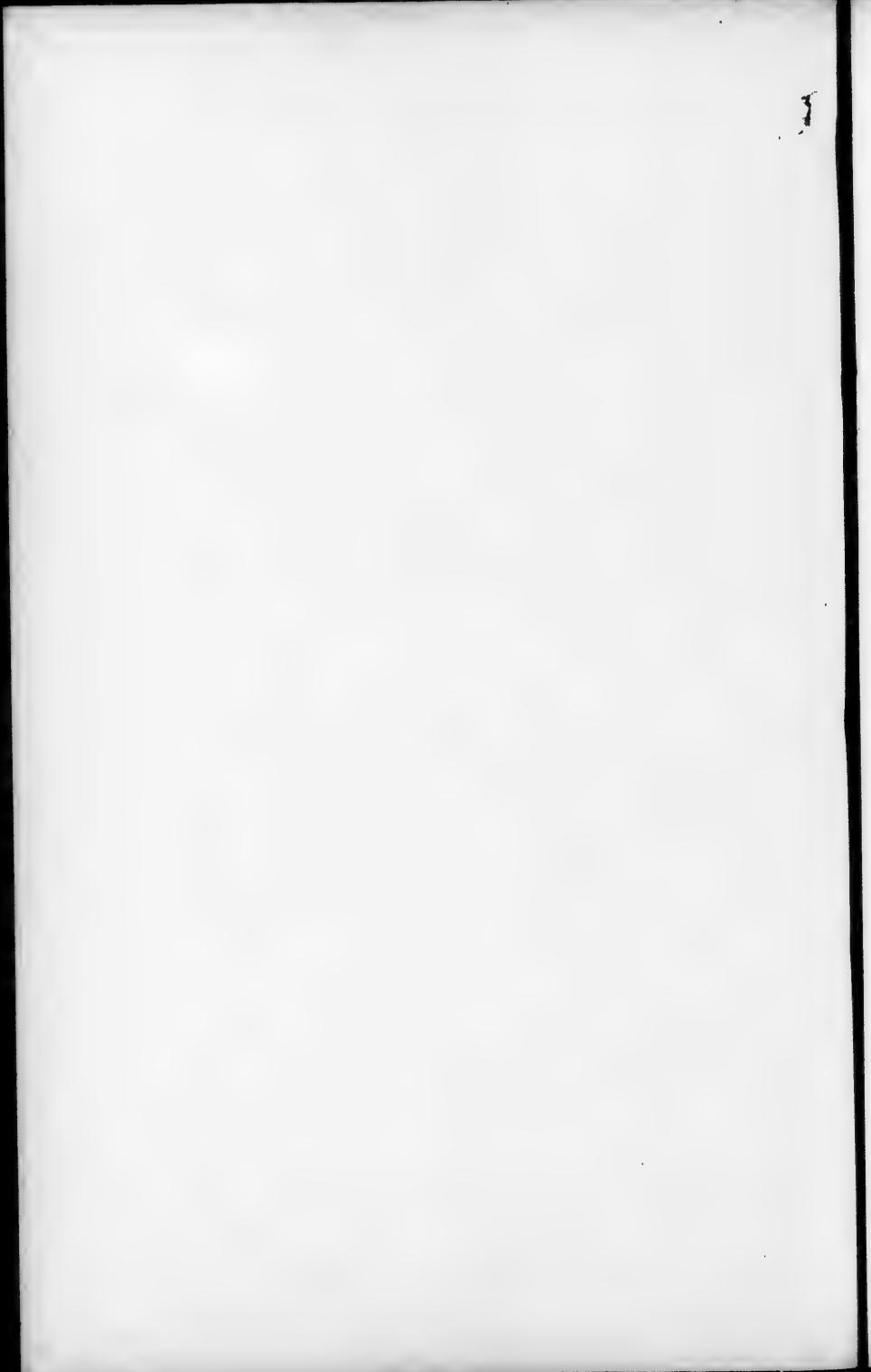
It is, moreover, in contradiction of the position assumed by the United States on more than one occasion.

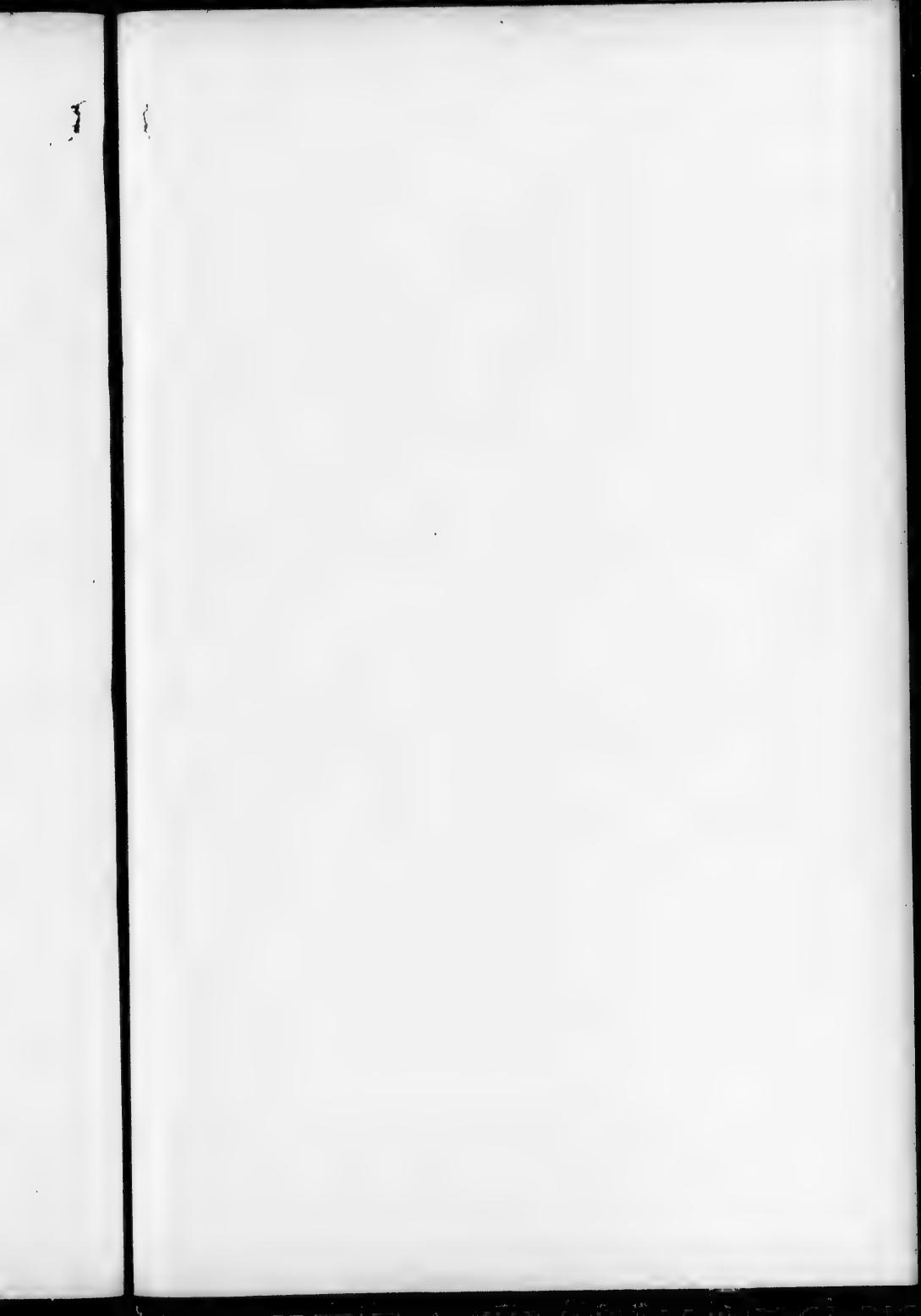
In order to arrive at some conception of what is meant by a right of "protection on property in fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary 3-mile limit," reference may be made to the latest despatch of Mr. Blaine, in which, on the part of the United States, he reviews the whole subject of the controversy. This is dated the 17th December, 1890. Some light appears there to be thrown upon the subject by the wording of the fifth question which the President, through Mr. Blaine, therein suggests for decision, but which was not accepted in that form. The question is as follows:—

"What are now the rights of the United States as to the fur-seal fisheries in the waters of Behring sea outside the ordinary territorial limits; whether such rights grow out of the cession by Russia of any special rights or jurisdiction held by her in such fisheries or in the waters of Behring Sea, or out of the ownership of the breeding islands and the habits of the seals in recasting thither and rearing their young thereon and going out from the islands for food, or out of any other fact or incident connected with the relation of these seal fisheries to the territorial possessions of the United States?"

It is further stated in a later part of this despatch that the Government of the United States—

"Do not lack abundant authority, according to the ablest exponents of international law, for holding a small section the Behring Sea for the protection of the fur-seals. Controlling a comparatively restricted area of water for that one specific purpose is by no means the equivalent of ~~declag~~ sealing the sea, or any part thereof, *mare clausum*."





What this "small section" of Behring Sea means is more fully explained in a foregoing portion of the despatch, as follows:—

"The President will ask the Government of Great Britain to agree to the distance of 20 marine leagues, within which no ship shall hover around the islands of St. Paul and St. George from the 15th May to the 15th October in each year. This will prove an effective mode of preserving the seal fisheries for the use of the civilized world. . . . The United States desires only such control over a limited extent of the waters in the Behring Sea for a part of each year as will be sufficient to insure the protection of the fur-seal fisheries."

In the question as now propounded for decision by arbitration there appears, however, to be an underlying claim to some exceptional if not absolute right of property in the fur-seals individually or collectively which cannot be admitted.

It is scarcely conceivable that any Government would endeavour to maintain such a proposition of ownership in the fur-seal as has been advanced for instance by Mr. Elliott, but the mere fact that such a claim has been even informally stated, renders it necessary to guard against any misconception in this regard.

Mr. Elliott, in a foot-note to p. 157 of his Census Report, 1891, writes as follows:—

"The fur-seals of Alaska, collectively and individually are the property of the general Government, and for their special and sole protection the extra legislation of July 1870 was designedly enacted. Every fur-seal playing in the waters of Behring Sea around about the Pribyloff Islands, no matter if found so doing 100 miles away from those rookeries, belongs there, has been begotten and born thereon, and is the animal that the explicit shield of the law protects; no legal sophism or quibble can cloud the whole truth of my statement. Construe the law otherwise, then a marine licence of hunting beyond 1 marine league (3 miles) from the shores of the Pribyloff Islands would soon raise up such a multitudinous fleet that its cruizing could not fail, in a few short years, in so harassing and irritating the breeding-seals as to cause their withdrawal from the Alaskan rookeries, and probable retreat to those of Russia, a source of undoubted Muscovite delight and emolument, and of corresponding shame and loss to us."

Another later, but again unofficial, exponent of the theory of "property" in fur-seals is found in the Honourable Mr. E. J. Phelps, who, in an article on the general subject contributed to a

popular magazine, seems inclined to take ground similar to that adopted by Mr. Elliott, though less definitely.

Speaking of right on the high seas, he says:—

"It never authorizes injury to the property or just rights of others, which are as sacred at sea as on shore. This colony of seals, making their home on American soil, and unable to exist without a home upon some soil, belong to the proprietors of the soil, and are a part of their property, and do not lose this quality by passing from one part of the territory to another in a regular and periodical migration necessary to their life, even though in making it they pass temporarily through water that is more than 3 miles from land."

Other passages which may be cited from Mr. Phelps article to the same effect are:—

"The simple question presented is whether the United States has a right to protect its property and the business of its people from the wanton and barbarous destruction by foreigners which it has made criminal by Act of Congress.

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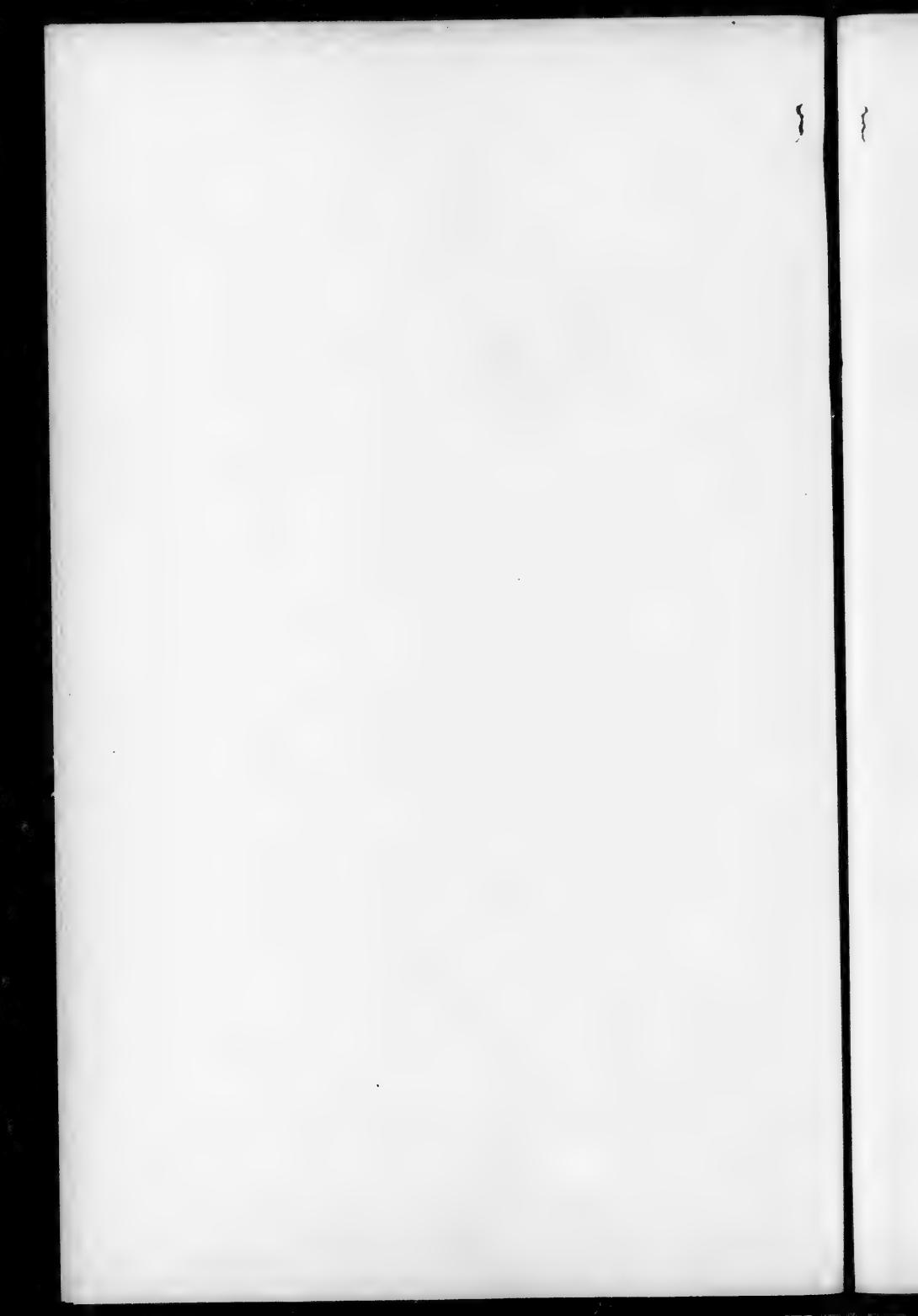
"These animals, as has been pointed out, are a large and valuable property, an established and proper source of public and private revenue and of useful industry."

Still further, in reviewing briefly the general aspects of the question in his opening remarks, he writes:—

"The Alaskan fur-seal fishery is the most important in the world. It was a material element in the value of that province when purchased by the United States from Russia, at a heavy cost, and one of the principal inducements upon which the purchase was made."

The context of the first quoted passages show that the theory of property is based, in so far as it is propounded by Mr. Phelps, on fundamentally erroneous conceptions of the habits and migrations of the fur-seals. It is stated, for instance, that the seal—

"Is not a denizen of the sea alone, *still less a 'wanderer of the sea.'* . . . It has a fixed habitation on the Alaskan shore, *from which it never long departs.* . . . It is the habit of this colony of seals to cross through the sea during breeding time to the Pribyloff Islands. . . . In making the passage, the seal necessarily cross a portion of Behring Sea which is more than 3 miles outside of either shore. . . . It has been the custom for several years past for certain Canadian vessels fitted out for the purpose to



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intercept the seals on this passage while outside the 3-mile line, and to shoot them in the water."

From all which it would appear to be believed that the fur-seal spends most of its time ashore on the breeding islands, and that it leaves territorial waters somewhere at the breeding season merely to cross a certain extent of open sea. These and other points which seem to be arrived in this particular contention are more fully dealt with later.

¶ The point raised in the last citation from Mr. Phelps' article appears, however, to be new, and may be disposed of at once. So far from the existence of the fur-seal having been a principal inducement for the purchase of Alaska by the United States, it is actually the fact that there is a singular and well-nigh complete absence of allusion to the arrival in all the pleas urged at the time in favour of this fur-close.

Mr. Elliott is particularly definite on this point. In his Official Report published in connection with the Tenth Census of the United States (pp. 68, 69), he writes:—

"STRANGE IGNORANCE OF THEIR VALUE IN 1867.—Considering that this return [that obtained from seal-skins] is the only one made by the Government of Alaska since its transfer, and that it was never taken into account at first by the most ardent advocates of the purchase of Russian America, it is in itself highly creditable and interesting; to Senator Sumner the friends of the acquisition of this territory in 1867 delegated the task of making the principal argument in its favour. Everything that was written in strange tongues was carefully translated for the choice bits of mention which could be found of Alaska's value. Hence his speech on the subject possesses this interest; it is the embodiment of everything that could be scraped together having the faintest shadow of authenticity, by all the eager friends of the purchase, which gave the least idea of any valuable natural resources in Alaska; therefore, when, in summing all this up, he makes no reference whatever to the seal islands, or to the fur-seal itself, the extraordinary ignorance at home and abroad relative to the Pribyloff Islands can be well appreciated."

The passage cited from Elliott, at least, has, however, the merit of formulating a definite claim with reference to property in seals, but merely to state such a claim in plain terms is to show its untenable character, for the assumption is made that the United States can, by its individual action, and under cover of a domestic law,

control the rights of other Powers upon the high seas. The claim, it is true, is in this instance made only in respect to seals; but any such principle once acknowledged might, on very similar grounds, be extended to other fisheries, and more particularly to the taking of salmon or other fishes at sea, the natural breeding-places of which are found in rivers, and thus within recognized territorial limits. Apart from the ordinary limits of marine jurisdiction attaching to coast-lines, or to some exceptional claim to areal jurisdiction over some tract of sea, however limited or bounded, there is absolutely no precedent for the assumption of the right to property in a free-swimming animal, the course of which is uncontrolled, and not controllable by man.

On this point, it is submitted, that Lord Salisbury's statement of the law contained in his letter to Sir Julian Pauncefote of the 22nd May, 1891, is entirely conclusive. He writes:—

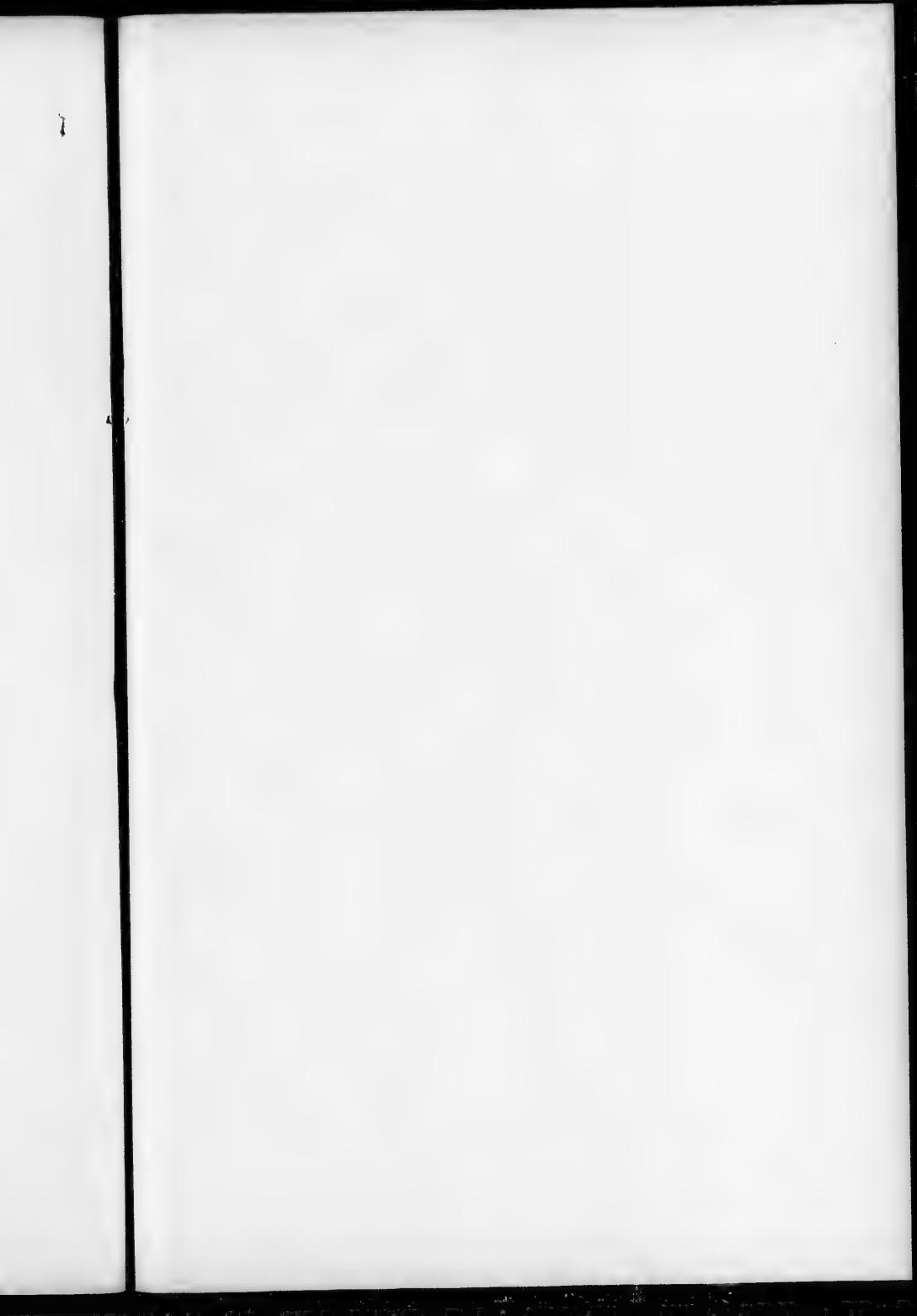
"Fur-seals are indisputably animals *ferae naturae*, and these have been universally regarded by jurists as *res nullius* until they are caught; no person, therefore, can have property in them until he has actually reduced them into possession by capture."

If the seals are property, why are they so only in Behring Sea? Outside Behring Sea citizens of the United States have pursued the seals for years as Canadians have done, and are doing, without let or hindrance, and with the full knowledge and approval of the United States' Government.

The proposition that on one side of the passes of the Aleutians a seal is the property of the United States, and on the other it is the property of any man who can catch it, can only be supported on the ground that the Behring Sea is the domain of the United States, in other words, a *mare clausum*; and on the grounds set forth by Mr. Dana, it would not necessarily follow that the United States had the right to prohibit other nations from engaging in the fishery.

It is, moreover, submitted that if seals before capture constitute special property, the larceny of a seal on the high seas by a vessel not belonging to the United States is not cognizable by the United States' Courts, and that any claim to protection of seals outside of territorial jurisdiction must involve *mare clausum*. The remaining





ground would be, that taking a seal constitutes piracy!

The only known analogous cases in which a right of property in seals has been defined or declared is found in the Newfoundland Act, entitled "An Act to Regulate the taking of, and right of Property in, Seals" (52 Vict., cap. 23). Even here the enactment applies only to vessels sailing under the British flag. The clause referred to is as follows :—

"I. In any action or proceeding for the recovery of, or in relation to, the property in seals or seal pelts, killed by persons engaged in or prosecuting the seal fishery in steam-vessels going from, or coming to, the ports in this Colony, it shall be held that no property, or right of property, shall have accrued except in seals killed, scupled, panned, or bulked, by and in the actual charge of the claimants, or some person or persons for them working, or engaged in carrying away such seals or seal pelts."

In effect, therefore, this Regulation merely puts into precise terms, conformably to the nature of the operations in the region to which it applies, the general principles previously referred to.

On the other hand, and still referring to seals, it can be shown that the United States has more than once distinctly asserted the fur-seal fishery to be part of the ocean fishery, even claiming that, unless under exceptional circumstances, it should be free not alone without, but also within, the 3-mile limit.

The United States' Government on no occasion since the acquisition of the Pribiloff Islands in 1867 has attempted to enforce such a principle by legislation or otherwise either on behalf of itself or of its lessees of the islands.

The Law for the protection of the seal islands has never been enforced either against vessels of the United States or other countries outside of Behring Sea, therefore a large part of the year they are found all over the waters of the North Pacific.

From the official correspondence it has been made clear that the suggestion embodied in this question is an after thought.

Mr. Elliott's contention in respect to "property" in fur-seals (and apart from his assumption that such claim may be enforced as against all comers) appears to depend essentially on the statement that all fur-seals found in the North

Pacific are "begotten and born" on the Pribyloff Islands, belonging to the United States, and though not equally clearly advanced by Mr. Blaine, the contention of the United States' Government to the same effect appears also to rest on this or very similar premises.

In opposition to such claim, it may be said (1) that such premises are unsound, and (2) that, even if sound, the conclusions are unwarranted, either in law or on grounds of equity or precedent.

1. The Pribyloff Islands, upon which all the breeding rookeries belonging to the United States are situated, are not the only similar breeding rookeries in the North Pacific. Those of the Commander or Kamandaski Islands (Bering and Copper Islands) were discovered some years earlier by the Russians, and have ever since been frequented by large numbers of breeding seals, and have yielded important annual returns of seal-skins. Robben Island, near Saghalien Island, in the Okotsk Sea, has likewise been, ever since its discovery, occupied as a breeding rookery, and large numbers of skins have been obtained from it, notwithstanding the injurious effects produced by raids upon its shores, which have been chiefly attributable to citizens of the United States. Considerable breeding rookeries likewise existed on several of the Kurile Islands within the territorial jurisdiction of Japan and Russia, and some of these still survive, though in much diminished form, consequent on the effect of raids and illegal and impolitic destruction on the shores of these islands themselves. It is moreover certain that the fur-seal formerly resorted for breeding purposes to several places situated on the coast of British Columbia, and it is highly probable, if not absolutely certain, that a considerable number of young seals are still annually brought forth on various outlying parts of this coast.

Leaving aside, however, all doubtful or relatively unimportant cases of existing breeding places, we have the indelible fact that a large proportion of the whole number of fur-seals frequenting the North Pacific are brought forth on the Commander Islands, still belonging to Russia.

Thus, to establish even a colourable claim to "property" in any particular seals taken at sea, or to seals thus taken in any defined area, it

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becomes necessary to prove that such seals have been brought forth on certain specified islands within the territorial jurisdiction of the United States. The onus of proof devolves naturally those working such a claim, and from the very nature of the circumstances such proof is, it is submitted, impossible. Any exception to a so general claim, however small, must be considered as sufficient technically to invalidate it, and even if in any particular year it should by some means be found possible to substantiate the contention involved that all seals met with in the eastern port of the Pacific—say, east of the 180th meridian—had been born on the Pribyloff Islands, the circumstances of another season, whether those connected with wind or weather, or those resulting from the migratory movements of the food-fishes of the seal, might in the following year change the conditions and the ownership of the seals in any given tract of sea.

The opinions already published by those who have given the greatest amount of attention to the habits of the fur-seal of the North Pacific are sufficient to show that there is a general agreement in respect to the *prima facie* probability of interchange and migration of seals between the principal breeding places.

It is now generally admitted that the same seals do not return necessarily or even usually to the same breeding ground year after year. Mr. Elliott quotes an experiment made by the Russians, in which 100 young males were marked, at one locality on St. Paul Island. Next year some of the seals so marked were included in the catch from "every part of the island." In 1870, again, a similar experiment was made on the same island, and, respecting the 100 seals then marked, it is said:—

"Of this number, in the summer of 1872, when I was there, the natives found in their driving of 75,000 seals Census Report, p. 31. from the different hauling-grounds of St. Paul up to the village killing-grounds, two on Novastoshna rookery 10 miles north of Lukannon (the point at which the seal had been marked), and two or three from English Bay and Tolstoi rookeries, 6 miles west by water; one or two were taken on St. George Island, 36 miles to the south-east, and not one from Lukannon was found among those that were driven up from these."

The same, or a very similar, experiment is referred to by Captain Bryant.

In the Congressional Report on the fur-seal In Monograph of North-American Pinnipeds, Allen, p. 401.

fisheries of Alaska, Dr. H. H. McEntyre likewise states that—

50th Cong., 2nd Sess., H. R., 3883, p. 128. "The seals are found indiscriminately on the two islands; that is seals born on St. George are found on St. Paul, and vice versa."

Apart from such definite experiments, and over wider areas where, so far, such experiments have not been possible, information as to changes in the resort of seals as between one and another of the various breeding islands in the North Pacific must depend largely upon the opinions of those who have had occasion to study the habits of the seal, and upon the facts which such persons have noted.

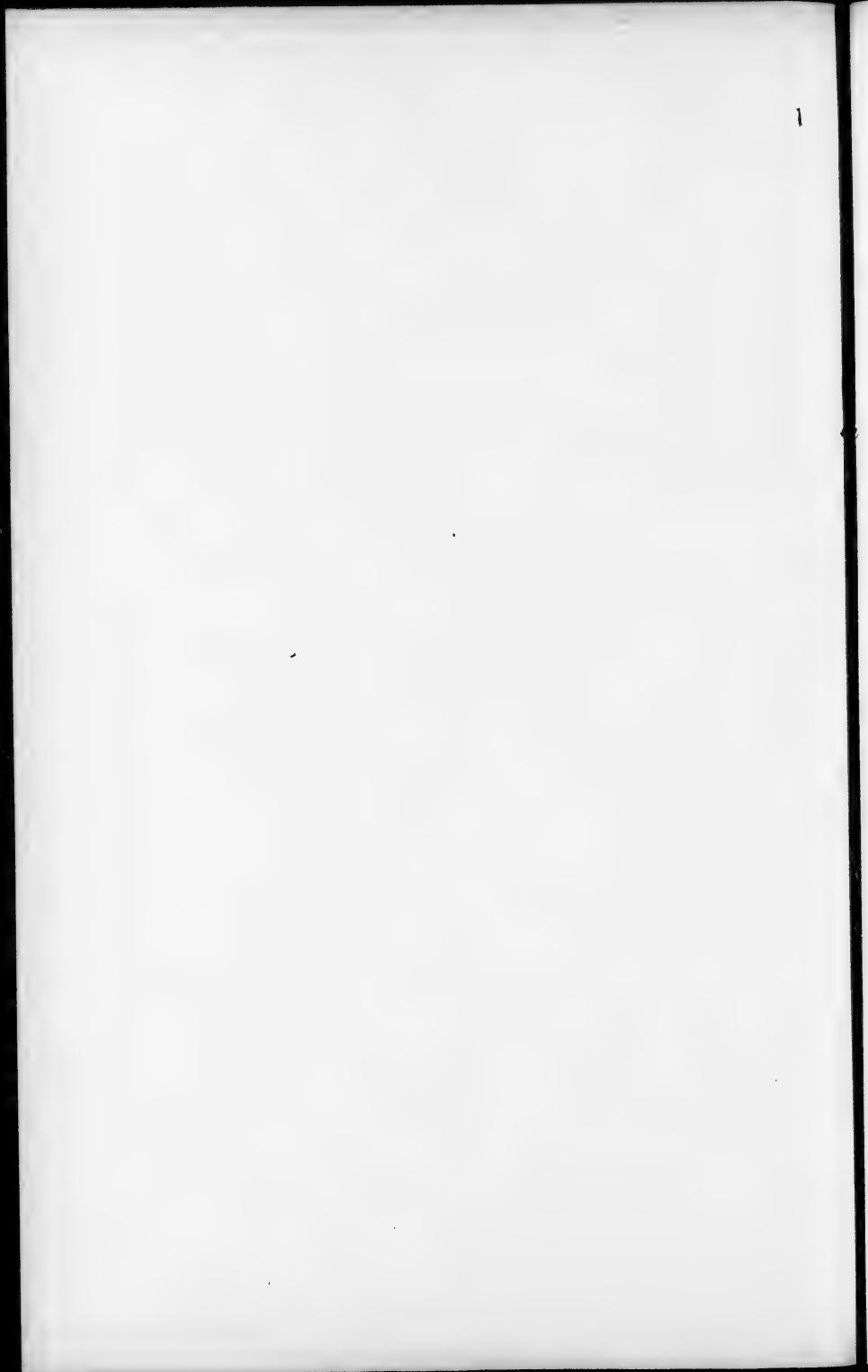
Such interchange of seals between the various breeding places may be supposed to occur in two ways: first, in correspondence with natural and casual events such as winds, currents, and the pursuit of food-fishes; second, in consequence of the disturbance of the breeding places by man. On the latter point, Scammon, in his well-known work (p. 152), sums up the result of his observations as follows:—

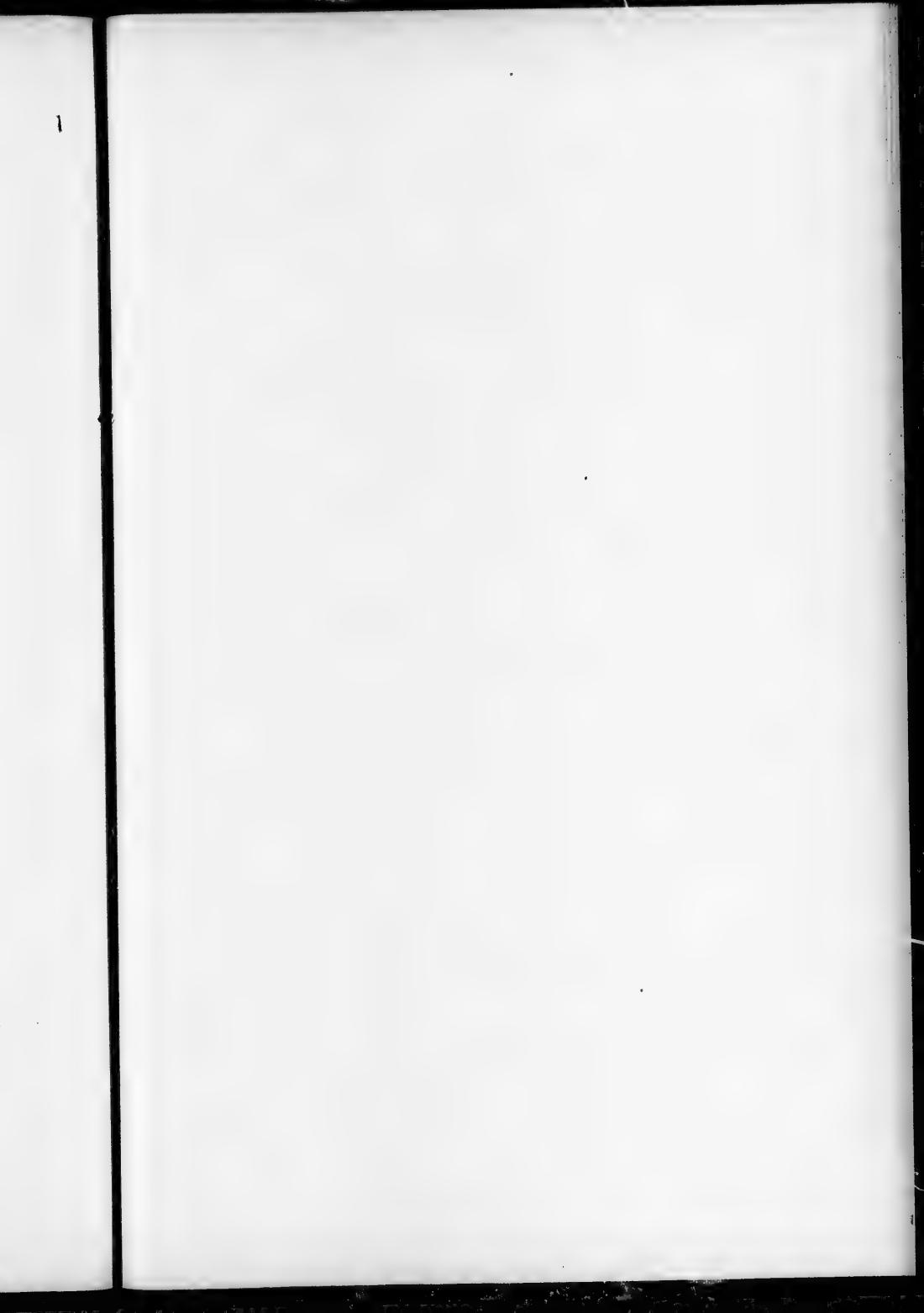
"We may add, likewise, from our own observation, and as the expressed opinion of several experienced sealing masters, that their (the seals) natural migrations extend over a great expanse of ocean, and if they are unduly disturbed in their favourite haunts for several successive years, they are quite sure to seek some distant and unknown place where they can congregate unmolested by man."

A further reference, with the same meaning, is found in the passage quoted from Elliott's Report on a previous page.

Mr. Elliott, in another part of the same Report (p. 69), after asking a question as to the possible accessions of seals to the Commander from the Pribyloff Islands, replies to his own question as follows:—

"Certainly, if the ground on either Behring or Copper Island, in the Commander Group, is as well suited for the wants of the breeding fur-seal as is that exhibited by the Pribyloff Islands, then I say, confidently, that we may at any time note a diminution here, and find a corresponding augmentation there; for I have clearly shown in my chapter on the habits of these animals, that they are not so particularly attached to the respective places of their birth, but that they rather land with an instinctive appreciation of the fitness of that ground as a whole."





The same writer, in his "Report on the Condition of Affairs in Alaska," 1875 (p. 265 *et seq.*), under the heading "Thoughts upon possible Movements of the Fur-Seals in the Future," treats the subject at some length, reaching very similar conclusions, adding:—

"It is not unlikely that some season may occur when an immense number of the fur-seals which have lived during the last four or five years on the Pribyloff Islands should be deflected from their usual feeding range by the shifting of schools of fish, &c., so as to bring them around quite close to the Asiatic seal grounds in the spring, and the scent from these rookeries would act as a powerful stimulant for them to land there, where conditions for their breeding may be as favourable as desired by them."

In a Report on an investigation on the Alaska Commercial Company by a Committee of Congress, dated 1876, Mr. J. F. Miller, President of the Company, says that the seals upon the Pribyloff Islands—

"Maintain just about the natural increase very regularly; they do not seem to migrate."

But in reply to a further question as to whether they were not suffered at a former period to have been driven from the Pribyloff Islands to the Commander Islands, adds:—

■ "They no doubt were at one time. Some of them went over there, and where the others went we do not know, because they do increase upon the Russian islands; so history shows."

In a Congressional Report on the "Fur-seal Fisheries of Alaska," dated 1889, Mr. S. M. Buynitzky gives the following evidence:—

"Q. What, in your judgment, from your experience of business in these islands, would be the effect of opening up the business, that is, removing the restrictions so that everybody could go in there and kill fur-seals?—
A. The probable effect would be to drive the seals from these islands to the Russian group.

"Q. That is, driving them from the American islands over to the Russian islands?—A. That is the most probable effect. That was conceded at the time by all who studied the question. Secretary Boutwell knew that very well."

In the same Report (pp. 77, 78) Mr. C. A. Williams makes the following statements, which, though now known not to be entirely correct in

so far as they appear to relate to the *origination* of rookeries on the Commander Islands, are worthy of quotation:—

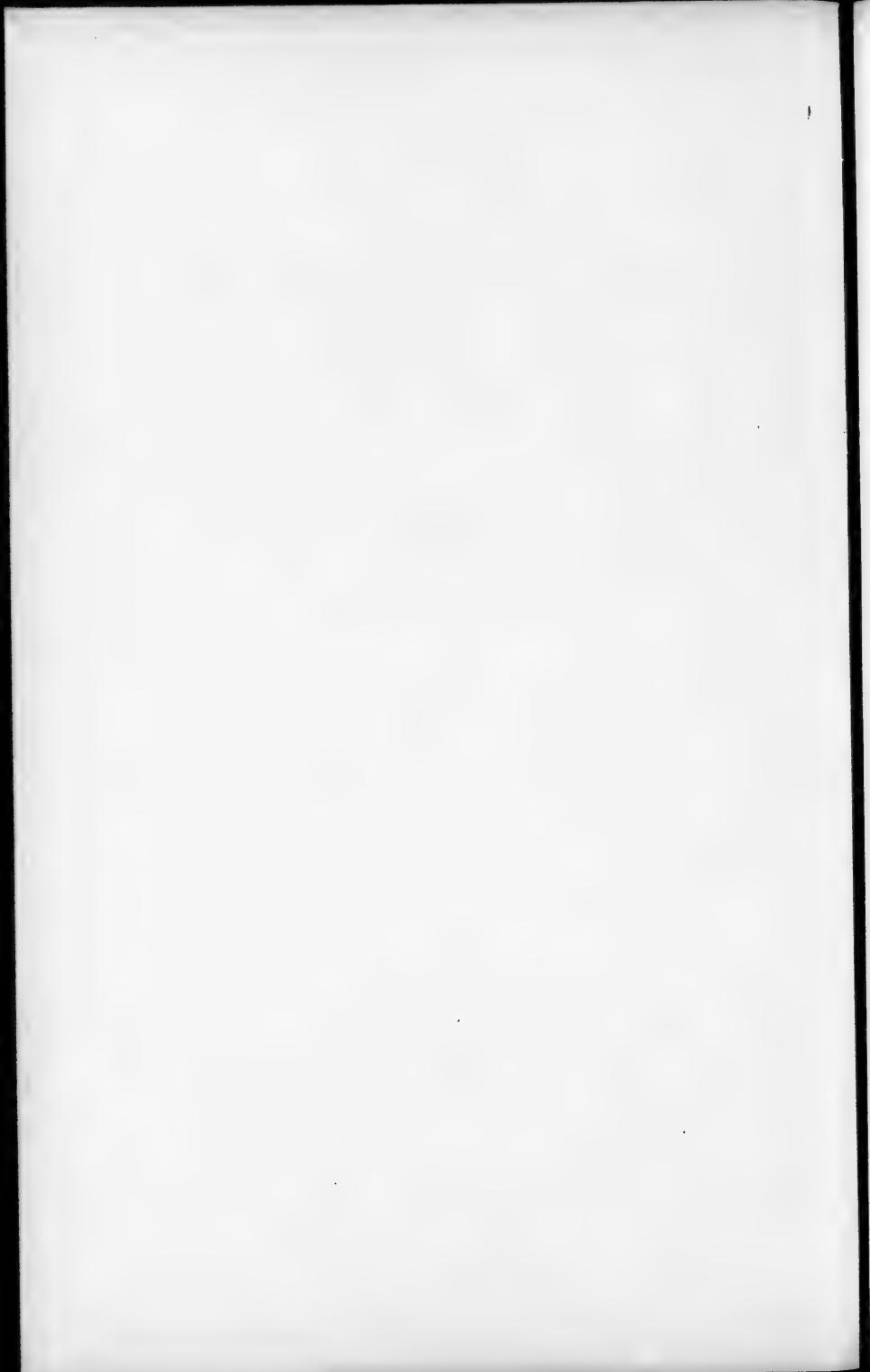
"It was supposed at that time (early in the Russian régime) that the commencement of seal-life on the Islands of Behring and Copper probably took place by reason of the indiscriminate killing on those islands (Pribyloff), diverting the seal from their usual haunts, and making them seek some other localities.

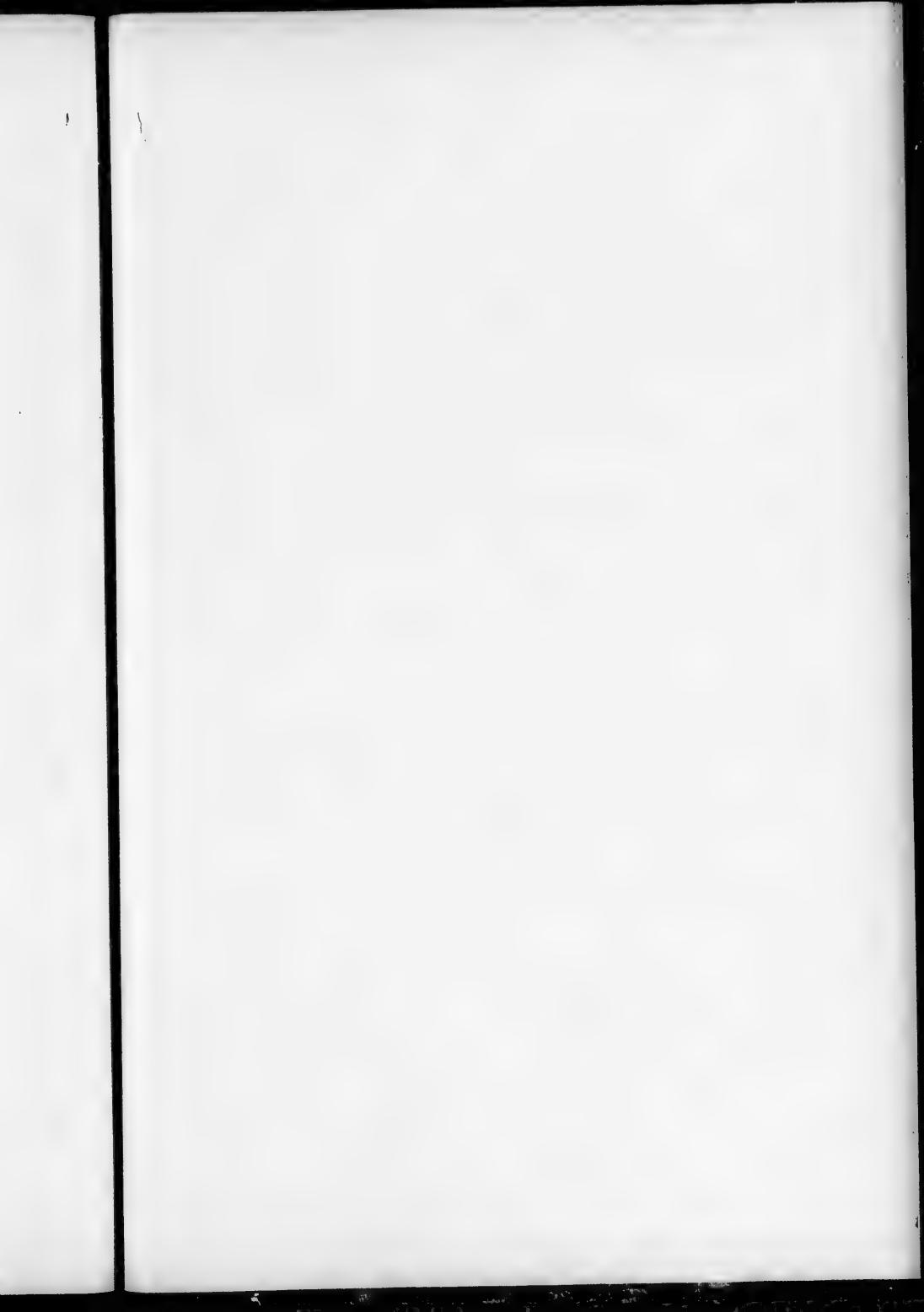
"Q. Was there a large number of seals which left the Pribyloff group and went over to the Russian islands?—

A. You could hardly expect them to go in a body. There had hardly been sealing or seal-life to any extent on the Commander Islands or Copper and Behring. It had not attracted the attention of the Russians, but after the indiscriminate killing on the Islands of St. Paul and St. George, it was noticed that seal-life increased rapidly on the other islands, and the supposition is a natural one that they were diverted from the islands on which they had heretofore been undisturbed, and sought other places."

Though it is boldly claimed in the above-cited extract from Mr. Elliott's Report that the seals are not only born, but are also necessarily "begotten" on the Pribyloff Islands, and though it is, perhaps, not of importance from the point of view of *property* where the seals are begotten, there is abundance of evidence to show that this statement is unfounded.

(2.) If, however, it be for the moment assumed, and for the sake of argument, that all fur-seals met with in the eastern part of the North Pacific —say, as before, to the east of longitude 180°—are not only begotten, but born and reared on the Pribyloff Islands, which islands are the property of the United States. This circumstance does not establish any valid claim in law to a right of "protection," and far less to one of "property" in animals, *feræ naturæ*, thus produced. It is not known that any comparable claim has ever previously been asserted. An analogy of the most striking kind, and one which is particularly referred to by President Angell in this connection, and which is likewise contained in the same North American region, is afforded by a number of the most important migratory birds employed as food. Many of these birds are almost exclusively, and some, so far as known, exclusively, born and reared in Canadian territory in the northern part of the continent, but spend a certain proportion of the winter half of the year within the territory of the United





States. What would be thought of any claim made by Canada that such animals remained individually or collectively, wherever they may be found, under the protection of such municipal laws as she should enact for their protection or use?

To render the importance of this particular fact evident, and by way of verification in detail, the subjoined notes from a recognized authority on this subject may here be quoted. These are extracted from Dr. Elliott Cone's "Key to North American Birds," published in the United States in 1887.

Cygnus Columbianus (common American swan):

"United States in winter and during the migration . . . Breeds only in the high north."

Bernida Canadensis (common wild goose):

"It breeds in various parts of the United States . . . but the great number of individuals pass further north to nest."

Anser gambeli (American white-fronted goose):

"North America, at large; breeding in the far north, wintering in the United States."

Chen hyperboreus (snow goose):

"North America, at large; breeds in high latitudes, migrating and wintering in United States."

Bernida brenta (Brant goose):

"United States, only in winter and during the migrations, when abundant. Breeds in high latitudes to the Arctic coast."

Anas busca (mallard duck):

"Wild in abundance throughout North America breeding sparingly in United States as well as further north."

Dajila acuta (pin-tailed duck):

"Wintering and migrating in United States and beyond, breeding from northern borders northward."

Querquedula Carolinensis (American green-winged teal):

"Breeds from the northern borders of the United States. It is one of the earliest arrivals among the hordes of water-fowl that come thronging from the north in fall."

Also the greater and lesser scarf ducks, the ring-neck duck, red-head, canvas-back, all breed from at or about northern borders of United States northward.

Harelda glacialis (long-tailed duck):

"United States in winter only, breeding in high latitudes."

With further bearing on this point, and as showing in some particulars a very close analogy

to the conditions actually met with in the case of the fur-seal, the following extracts from Mr. A. R. Wallace's classical work on the "Geographical Distribution of Animals," vol. i, pp 26-28, may be quoted:—

"It is an ascertained fact that many individual birds return year after year to build their nests in the same spot. This shows a strong local attachment, and is, in fact, the faculty or feeling on which their very existence probably depends. For were they to wander at random each year, they would almost certainly not meet with places so well suited to them, and might even get into districts where they or their young would inevitably perish. It is also a curious fact that in so many cases the old birds migrate first, leaving the young ones behind, who follow some short time later, but do not go so far as their parents. This is very strongly opposed to the notion of an imperative instinct. The old birds have been before the young have not; and it is only when the old ones have all, or nearly, gone that the young go too, probably following some of the latest stragglers. They wander, however, almost at random, and the majority are destroyed before the next spring. This is proved by the fact that the birds which return in spring are, as a rule, not more numerous than those which came the preceding spring, whereas those which went away in the autumn were two or three times as numerous.

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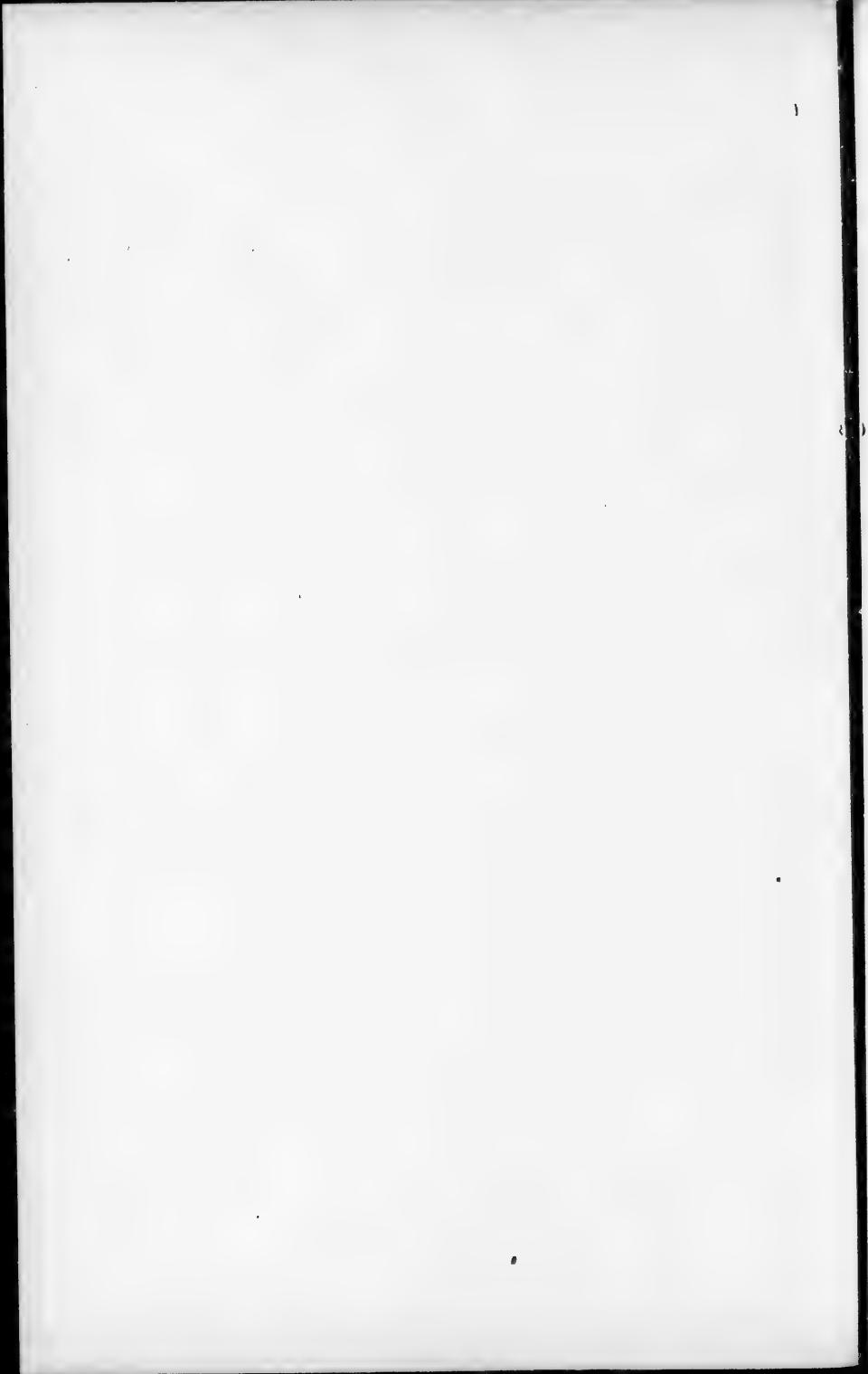
"It is assumed by some writers that the breeding place of a species is to be considered as its true home, rather than that to which it retires in winter, but this can hardly be accepted as a rule of universal application."

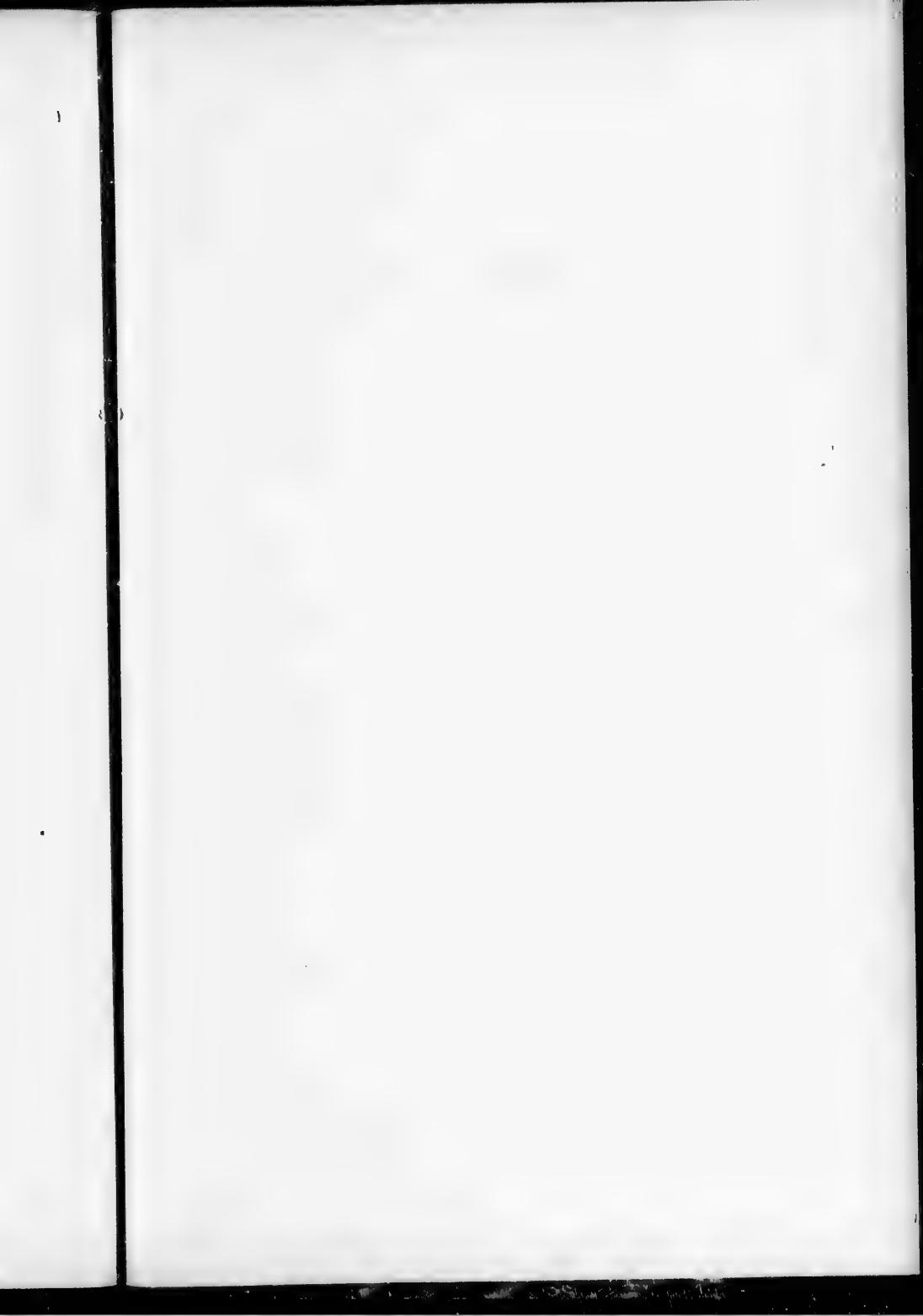
After some further details relating particularly to the food of birds, he adds:—

"For the purposes of the study of geographical distribution therefore, we must, except in special cases, consider the true range of a species to comprise all the area which it occupies regularly for any part of the year."

These remarks of Mr. Wallace are further of importance in showing authoritatively that from the point of view of the naturalist, the "powe" or "habitat" of an animal cannot be properly restricted to the territory in which it is known to breed, and thus in disposing of a possible further argument which might conceivably be based on such an assumption.

On additional circumstances deserving of note under this particular head, is found in the facts, now conclusively proved, that the great majority of the fur-seals met with in the eastern part of the North Pacific, spend the months of winter





and spring in that part of this ocean adjacent to the coasts of British Columbia, and that though the majority of these particular seals undoubtedly resort for a certain period in each year to the Pribyloff Islands to bring forth their young, they at this season abstain in great measures if not absolutely from feeding; while their sustenance is chiefly derived from the food fishes which are to be found in their winter habitat. Such food fishes if not consumed by the seals, would be available for capture by, and for the support of, the inhabitants of the adjacent coast, and in consequence of this fact, these inhabitants must be considered as having an equitable if not a legal claim to become beneficent in the taking of the fur-seal. That the quantity of fish thus consumed must be very large is evident.

Mr. W. H. Elliott has made several attempts to estimate it, and states his belief that a full-grown consume *per diem* about 40 lbs. of fish, adult females at least 10 lbs. or 12 lbs., and the rapidly-growing pups and young bachelors not much of any less. He adds:—

"Therefore, this great body of 4,000,000 and 5,000,000 *Census Report*, hearty active animals which we know on the seal islands p. 64, must consume an enormous amount of such food every year. They cannot average less than 10 pounds of fish each per diem, which gives the consumption, as exhibited by their appetite, of over 6,000,000 tons of fish every year. . . .

"If the seals can get double the quantity which I credit them with above, startling as it seems, still I firmly believe that they get it every year. An adequate realization by ichthyologists and fishermen as to what havoc the fur-sea boats are annually rocking among the cod, herring, and salmon of the north-west coast of Alaska would disconcert and astonish them."

If further support of the general statement that the fur-seal in its demands for food must very notably affect the number of food-fishes, it may be supplied by the following remarks bearing on the strictly comparable effects of the voracity of the common or "hair-seal" on the fisheries of Denmark, and the efforts made to remedy this source of loss to these fisheries:—

"Owing to rewards now granted by the Fishing Society of Denmark, amounting to 3 kroners for each seal killed according to the Copenhagen correspondent of our contemporary, 'Industries,' the extermination of seals is now being energetically pursued in Danish waters. It appears that in those localities where the fishery industry has been

Extract, "Nautical Magazine," vol. liz,
No. 11, November,
'90.

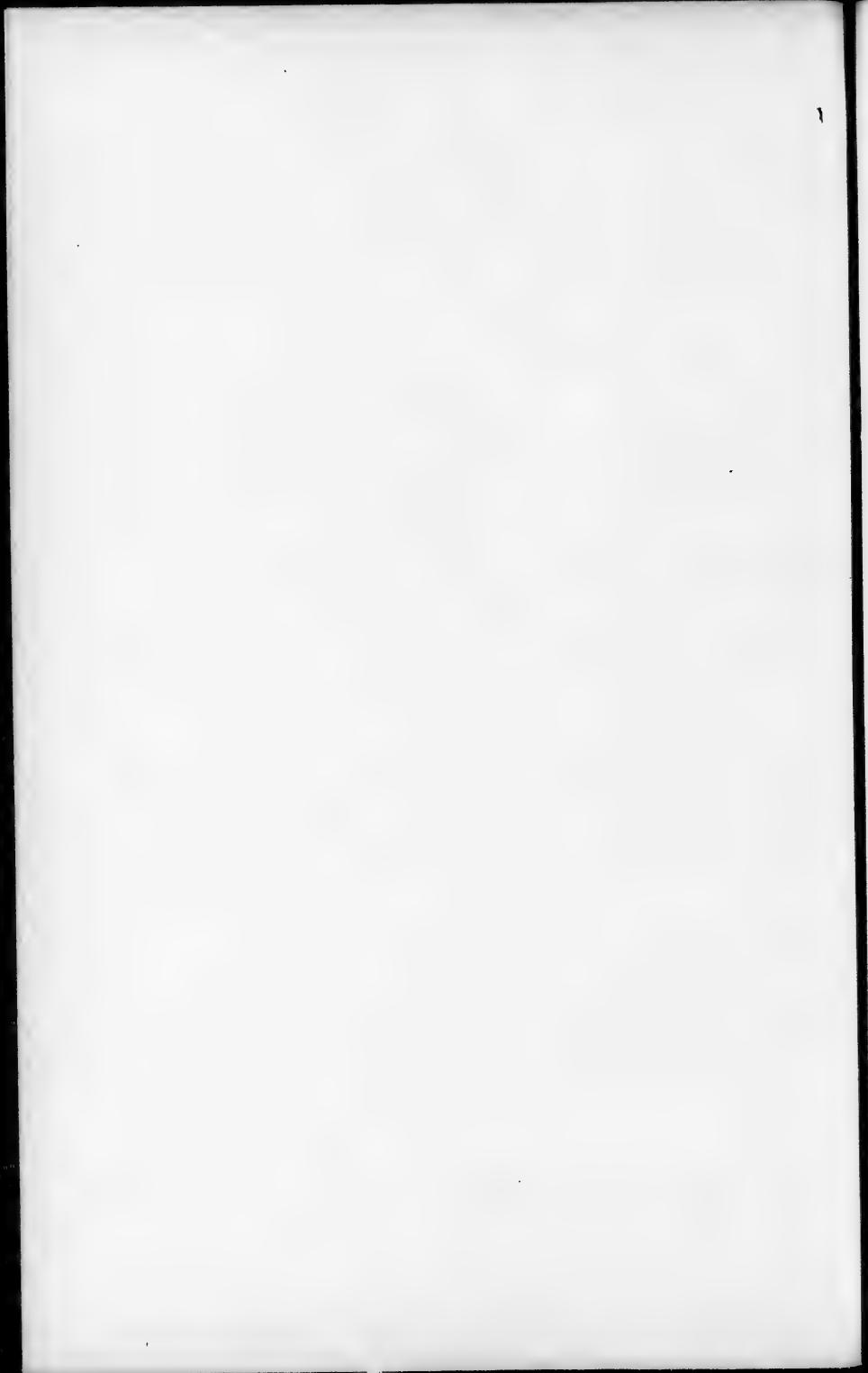
pursued with least success the seals most abound. A seal is seldom seen in the neighbourhood of Middlefart in the Little Belt, as the fishermen in that neighbourhood are very active in fishing and seal-hunting."

"*Au contraire*, on the small Island of Hosselo, north of Zealand, one man sent in the heads of no less than 120 seals, while another man sent in 40 within the last ten months. During this period 810 seals have been killed."

It must further be remembered in connection with this branch of the subject, that whether bred upon the Pribyloff or Commander or other islands, the actual time spent ashore by the seals on such breeding-places, or in their immediate vicinity is but a small part of the year, and that even including the entire time during which the seals of all classes collect in the region of these breeding-places, this represents less than half the cycle of the annual migration.

An additional argument in the interests of those claiming some exceptional monopoly in the benefits accruing from the taking of fur-seals upon their breeding-places, is supposed to have been found in insisting on the interests of the so-called "natives" of the Pribyloff Islands, which it is maintained must be taken into account. As a matter of fact, however, the Pribyloff Islands were uninhabited when discovered by the Russians, and a certain number of Alcuts were taken there solely for the purpose of obtaining the necessary labour for killing seals and curing the skins, in the interests of the Government or its lessees. The interests of these natives have at no time been allowed to conflict with those of the chartered beneficiaries of the breeding-islands, and at the present time, the official figures of the Eleventh Census of the United States show that these people, composed partly of the descendants of those originally deported thither by the old Russian Companies and in part of more recent importations from the Aleutian Island, number scarcely more than 300 in all. These inhabitants of the Pribyloff Islands have, in the course of events, become as a rule either half or three-quarters European in blood, but unfortunately without attaining a comparable advancement in knowledge or improvement in their mode of life.

Still further, it must be noted that the regulations now imposed prevent the people of the





same stock, and often the close relatives of the inhabitants of the Pribyloff Islands, but who still remain in the Aleutian Islands, from killing the fur-seal, even for food, though such killing must be regarded as among their primitive rights. The Indians of the coast of British Columbia have likewise been accustomed from time immemorial to hunt the fur-seal, for food and skins. The development of what is now known as "pelagic sealing" has already, by affording remunerative employment to many of them, materially aided in their advancement, and the money gained by these people actually constitutes a large part of the entire support of most of the Indians inhabiting the west coast of Vancouver Island, numbering several thousands. The number of Indian hunters of British Columbia alone, at the present time engaged in pelagic sealing is about 400, and it is estimated that the amount of money gained by these men annually is probably about 40,000 dollars. This does not include the gains made by independent Indian hunters of the British Columbian coast who pursue the fur-seals in their own canoes from its shores, and which cannot be placed at less than 30,000 dollars annually.

In so far as native and primitive vested interests in the fur-seal fishery go, therefore, not only are those of the Indians of the British Columbian Coast, together with those of the Makah Indians of the adjacent State of Washington, and that of the autochthonous Aleuts of the chain of the same name, the more direct and legitimate, but quantitatively valued they are much the more important. Yet any claim to exclusive property in seals derived from the possession of the Pribyloff Islands, or from any other circumstances, implies an arbitrary denial of the title of these native peoples to their prescriptive right in hunting this animal!

The known facts regarding the extraordinary profits derived by the lessees of the Pribyloff Islands for twenty years or more, together with the large sums accruing to the United States' Government in the shape of rent and taxes on the skins taken by the lessees, go far toward establishing an assumption against the strictly philanthropic motives which are at the present time prominently advanced.

A singular contrast is found to the mode of procedure by the United States respecting seal-

ing, in that adopted by the same power in the case of the mackerel fisheries of the Atlantic. Here, although the use of the engine known as the *'passe seine'* threatens the very existence of these fisheries, the Government has only endeavoured indirectly to control its own citizens in such use by enacting that no fish taken before a given date may be landed at its ports. If the action taken in Behring Sea is justifiable, surely it would be equally justifiable and on like grounds to seize vessels found in possession of purse seines anywhere within the mackerel fishing area of the Atlantic. It would be sufficient to affirm that the use of such engines was *contra bonos wares*, and that action was taken in behalf of the human races.

Admitting that, which is stoutly denied, the hunting of seals at sea is as injurious to seal life, as for instance the use of a purse seine is to mackerel fisheries of the Atlantic. Nevertheless, no nation under the principles of law and the practice among nations can, without the concurrence of all interested Powers, interfere with vessels engaged in this pursuit when outside of the ordinary territorial jurisdiction.

Upon this point the authorities in the United States and in Great Britain are quite clear.

"Le Louis," 1816.

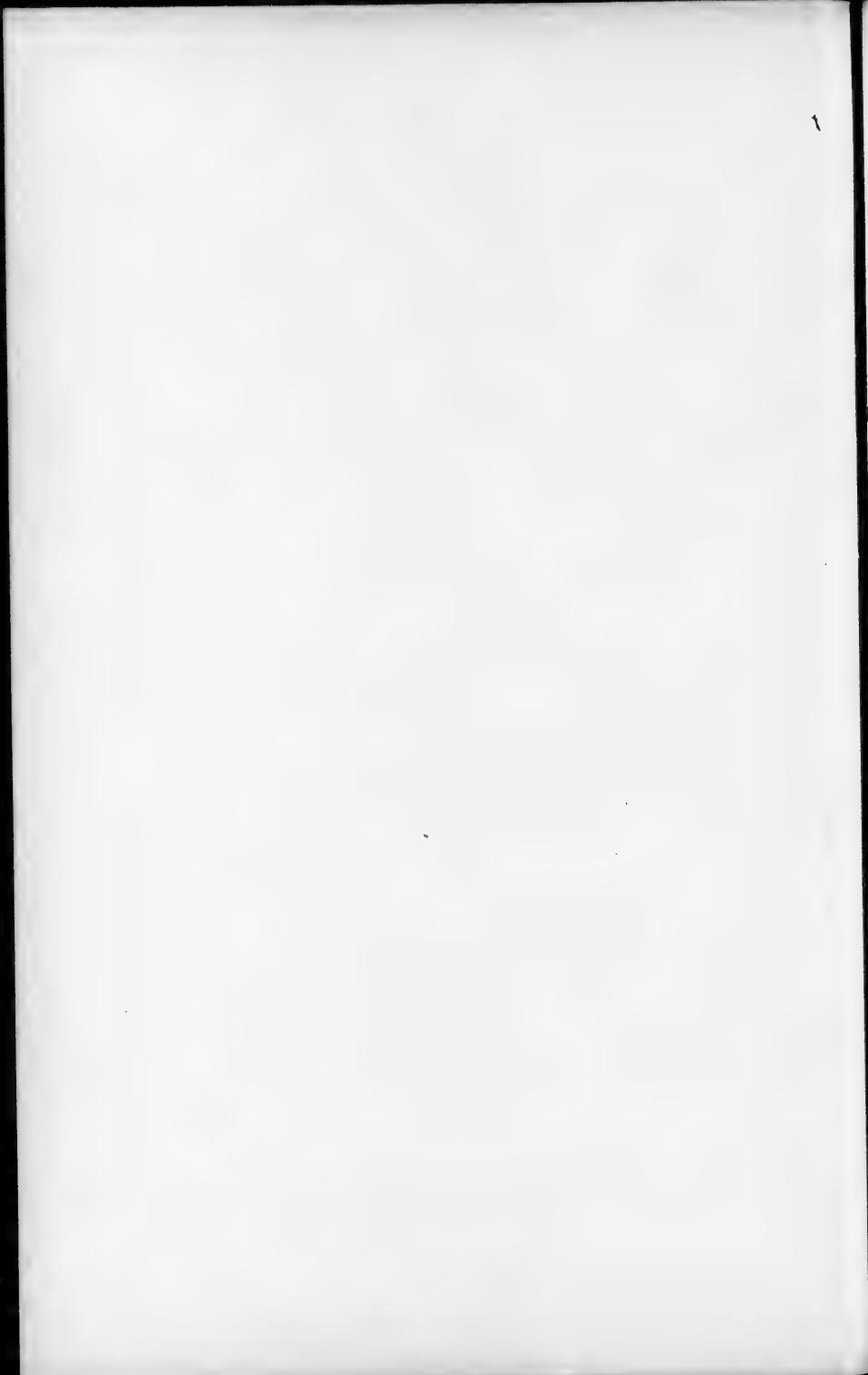
A French vessel sailed from Martinique on the 30th January, 1816, destined on a voyage to the coast of Africa and back, was captured 10 or 12 leagues to the southward of Cape Mesurda, by the "Queen Charlotte's" cutter, and carried to Sierra Leone. She was proceeded against in the Vice-Admiralty Court of that country.

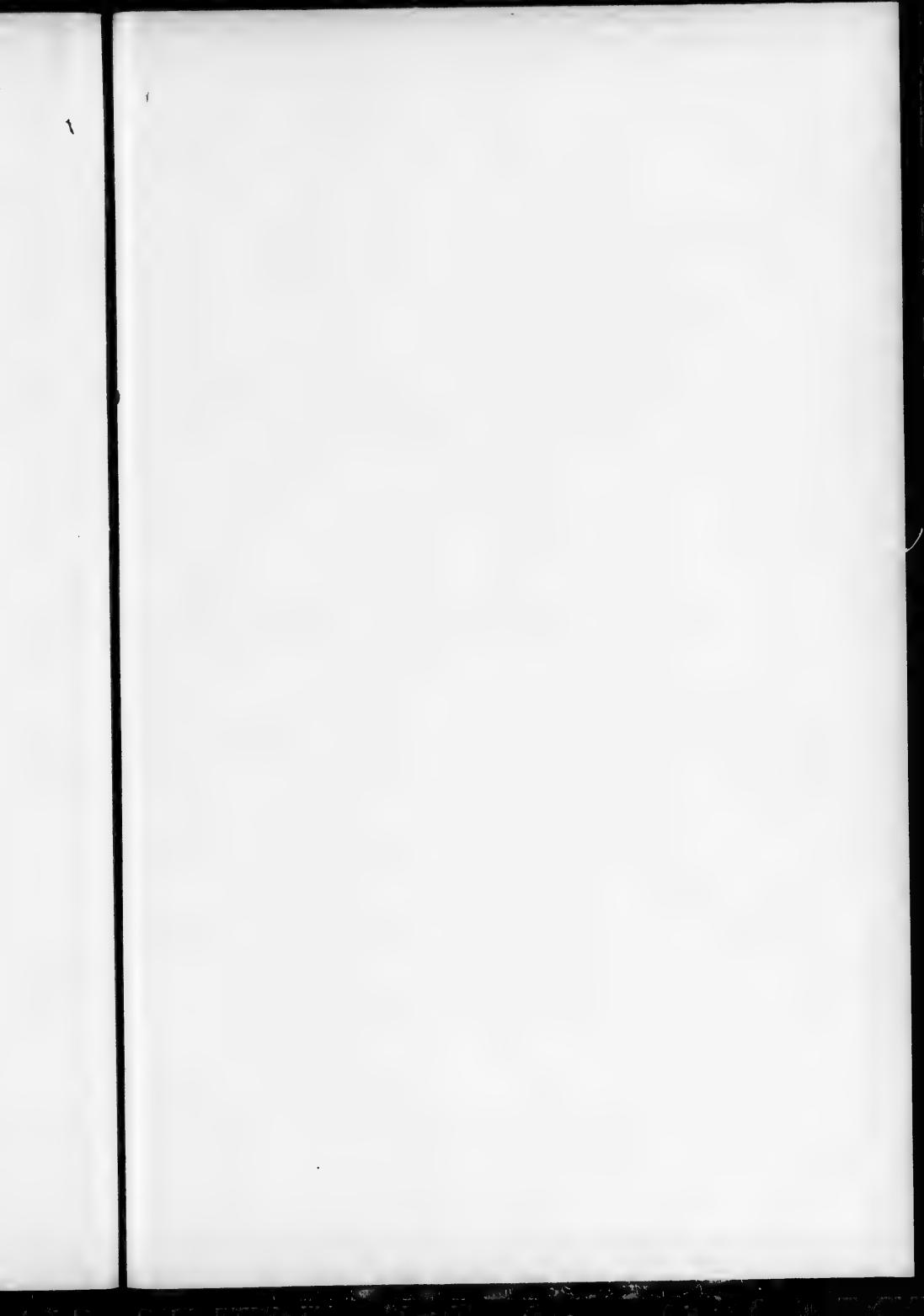
It was alleged that the vessel was fitted out for the purpose of carrying on the African Slave Trade, and that trade had been abolished by the internal laws of France, and by the Treaty between Great Britain and France.

The King's Advocate argued that occasions may arise when justifiable as in present case which is transgression of municipal law and law of nations. Traffic in slaves is a crime, and it is duty and right of every nation to prevent crime.

. Vessels was engaged in Traffic prohibited by laws of her own country and contrary to the laws of humanity and justice therefore ought not to be restored to claimant.

Sir William Scott, afterwards Lord Stowell,
[307] 2 L





held, however, that trading in slaves is not a crime by universal law of nations. He observed :—

" Neither this Court nor any other can carry its private apprehensions, independent of law, into its public judgments on the quality of actions. It must conform to the judgment of the law upon that subject; and, acting as a Court in the administration of law, it cannot attribute criminality to an act where the law imputes none. It must look to the legal standard of morality, and upon a question of this nature, that standard must be found in the law of nations as fixed and evidenced by general and ancient and admitted practice, by Treaties and by the general tenor of the laws and ordinances and the formal transactions of civilized States.

" Much stress is laid upon a solemn declaration of very eminent persons assembled in Congress, whose rank, high as it is, is by no means the most respectable foundation of the weight of their opinion that this traffic is contrary to all religion and morality. Great as the reverence due to such authorities may be, they cannot, I think, be admitted to have the force of overruling the established course of the general law of nations.

A country has right to enforce its navigation laws so long as it does not interfere with rights of others—no right, in consequence, to visit and search all the apparent vessels of other countries in high seas.

" It is said, and with just concern, that if not permitted in time of peace it will be extremely difficult to suppress the traffic. It will be so, and no man can deny that the suppression, however desirable and however sought, is attended with enormous difficulties—difficulties which have baffled the most zealous endeavours for many years. To every man it must have been evident that without a general and sincere concurrence of all the maritime States in the principle and in the proper modes of pursuing it, comparatively but little of positive good could be acquired, so far as least as the interests of the victims of this crime were concerned in it; and to every man who looks to the rival claims of these States, to their established habits of trade, to their real or pretended wants, to their different modes of thinking, and to their real mode of acting upon this particular subject, it must be equally evident that such a concurrence was matter of very difficult attainment. But the difficulty of the attainment will not legalise measures that are otherwise illegal. To press forward to a great principle by breaking through every other great principle that stands in the way of its establishment; to force the way to the liberation of Africa by trampling on the independence of other States in Europe; in short, to procure an eminent good by means that are unlawful is as little consonant to private morality as to public justice. Obtain the concurrence of other nations, if you can, by

application, by remonstrance, by example, by every peaceable instrument which man can employ to attract the consent of man. But a nation is not justified in assuming rights that do not belong to her, merely because she means to apply them to a laudable purpose, nor in setting out upon a moral crusade of converting other nations by acts of unlawful force. Nor is it to be argued that because other nations approve the ultimate purpose, they must, therefore, submit to every measure which any one State or its subjects may inconsiderately adopt for its attainment."

The Judgment of the Vice-Admiralty Court of Sierra Leone, condemning the French ship for being employed in the Slave Trade and for forcibly resisting the search of the King of England's cruisers, was reversed.

"Antelope."
10 Wheaton, 66.

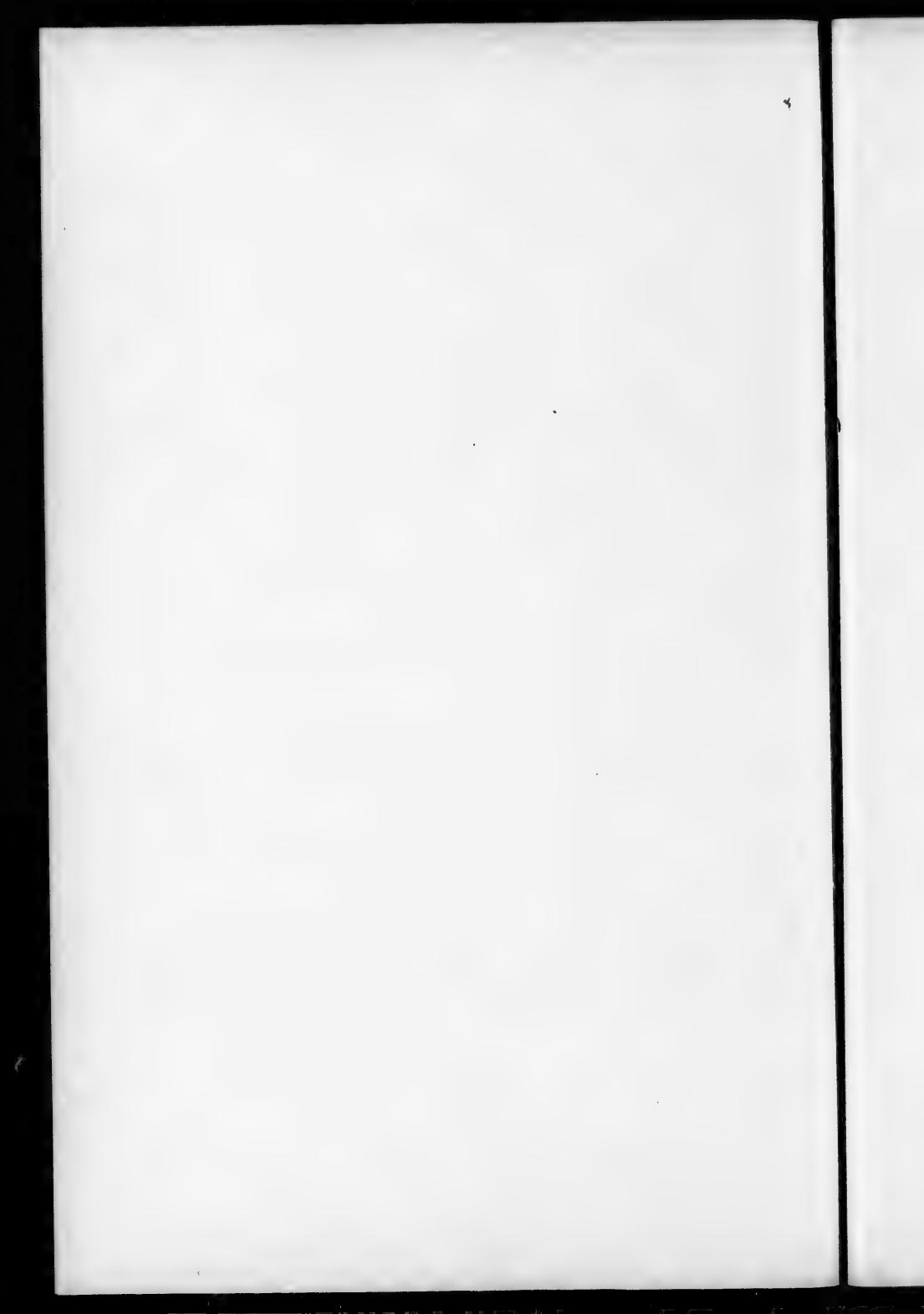
The decision of the Supreme Court of the United States in the case of the "Antelope" is to the same effect. There Chief Justice Marshall delivered the opinion of the Court, holding that the Slave Trade, though contrary to the law of nature, was not in conflict with the law of nations:—

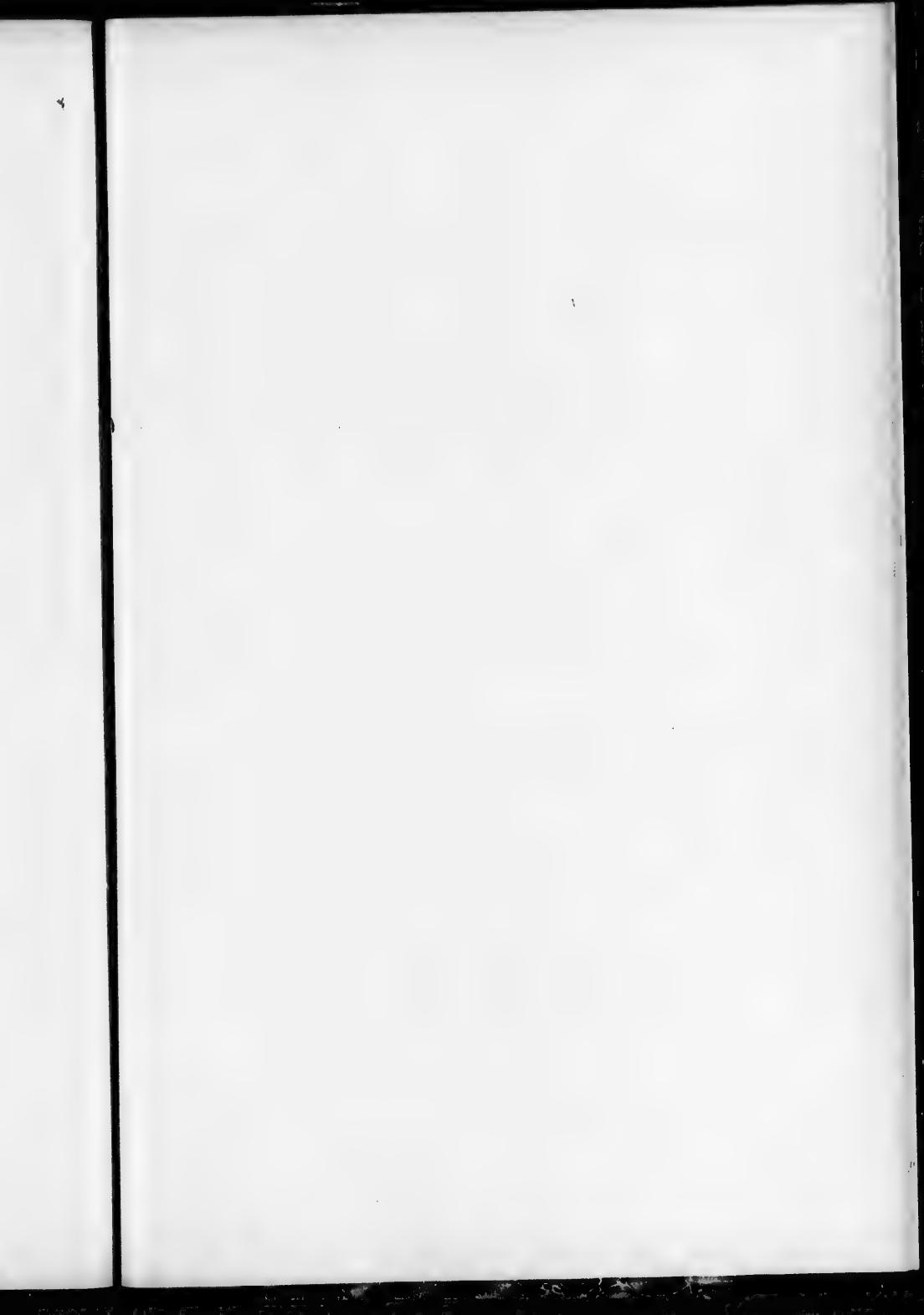
"No principle of general law is more universally acknowledged than the perfect equality of nations. Russia and Geneva have equal rights. It results from this equality that no one can rightfully impose a rule on another; each legislates for itself, but its legislation can operate on itself alone. A right, then, which is vested in all by the consent of all, can be divested only by consent; and this trade, in which all have participated, must remain lawful to those who cannot be induced to relinquish it. As no nation can prescribe a rule for others, none can make a law of nations, and this traffic remains lawful to those whose Governments have not forbidden it.

"If it is consistent with the law of nations, it cannot, in itself, be piracy. It can be made so only by Statute, and the obligation of the Statute cannot transcend the legislative power of the State which may enact it.

"If it be neither repugnant to the law of nations nor piracy, it is almost superfluous to say in this Court that the right of bringing in for adjudication in time of peace, even where the vessel belongs to a nation which has prohibited the trade, cannot exist. The Courts of no country execute the penal laws of another, and the course of the American Government on the subject of visitation and search would decide any case in which that right had been exercised by an American cruiser on the vessel of a foreign nation not violating our municipal laws against the captors.

"It follows that a foreign vessel engaged in the African Slave Trade, captured on the high seas in time of peace by an American cruiser and brought in for adjudication, would be restored."





The whole subject is fully disposed of in Mr. Dana's note No. 108 to Wheaton (p. 258), where it is said of Chief Justice Marshall, in Church^b against Hubbard, 2 Cranch, 187:—

"It is true that Chief Justice Marshall admitted the right of a nation to secure itself against intended violations of its laws by seizures made within reasonable limits, as to which, he said, nations must exercise comity and concession and the exact extent of which was not settled, and in the case before the Court the 4 leagues were not treated as rendering the seizure illegal. This remark must now be treated as an unwarranted admission. . . . It may be said that the principle is settled that municipal seizures cannot be made for any purpose beyond territorial waters. It is also settled that the limit of these waters is in the absence of Treaty, the marine league or the cannon-shot. It cannot now be successfully maintained either that municipal visits and search may be made beyond the territorial waters for special purposes, or that there are different points of that territory for different objects; but as the line of territorial waters, if not fixed, is dependent on the unsettled range of artillery fire, and if fixed must be by an arbitrary measure, the Courts in the earlier cases were not strict as to standard of distance *where no foreign Powers intervened in the causes.* In later times, it is safe to infer that judicial as well as political Tribunals will insist on one line of marine territorial jurisdiction for the exercise of force on foreign vessels in time of peace for all purposes alike."

Woolsey, Professor of International Law at Yale Law School, in the sixth edition of "Woolsey's Treatise on International Law," says:—

"The recent controversy between Great Britain and the United States involving the right of British subjects to catch seals in North Pacific waters appears to be an attempted revival of these old claims to jurisdiction over broad stretches of sea. That an international agreement establishing a rational close season for the fur-seal is wise and necessary no one will dispute, but to prevent foreigners from sealing on the high sea or within the Kamtschata Sea, which is not even inclosed by American territory, its west and north-west shores being Russian, is as unwarranted as if England should warn fishermen of other nationalities off the Newfoundland banks.

"The right of all nations to the use of the high sea being the same, their right to fish upon the high seas or on banks or shoal places in them are equal."

In 1804 Great Britain claimed during the war with France to search neutral vessels on the high seas, and to seize her own subjects when found serving under a neutral flag.

Mr. Madison to
Mr. Monroe,
January 5, 1804,
laid before Con-
gress.

The position taken on this subject by the United States was not only in opposition to such a right but that country insisted that that *in no case* did the sovereignty of any nation extend beyond its own dominions and its own vessels on the high seas.

In 1832 the United States' schooner "Harriet," Davison, master, was seized by the Government of the Republic of Buenos Ayres at the Falkland Islands.

The Government claimed the right to capture and detain United States' vessels engaged in the seal fishery at the Malvinas and the islands and coasts adjacent to Cape Horn.

The United States' Chargé d'Affaires wrote, on the 20th June, 1832, to the Buenos Ayres Minister as follows :—

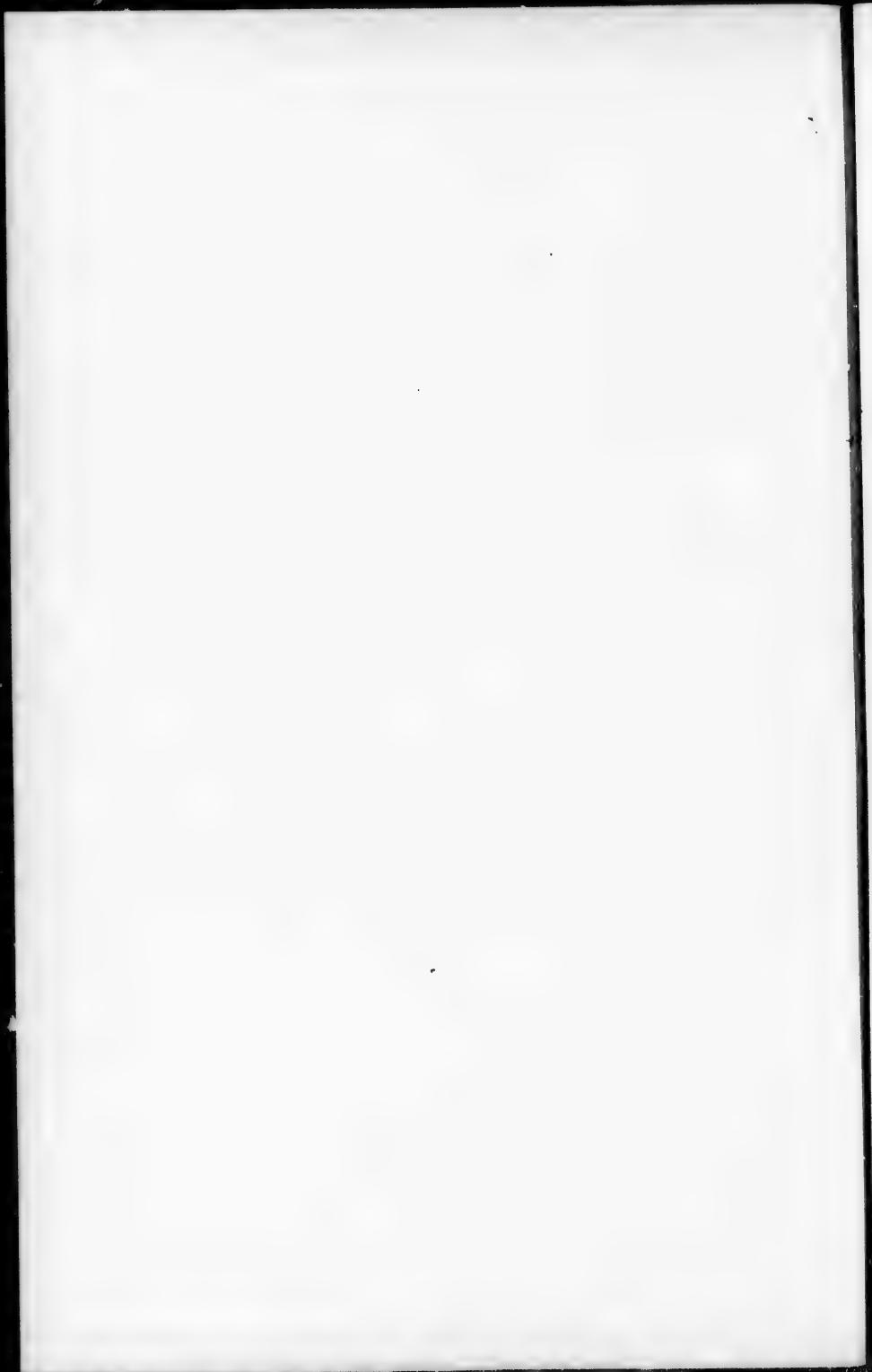
British and Foreign
State Papers, by
Hastings, vol. xx.

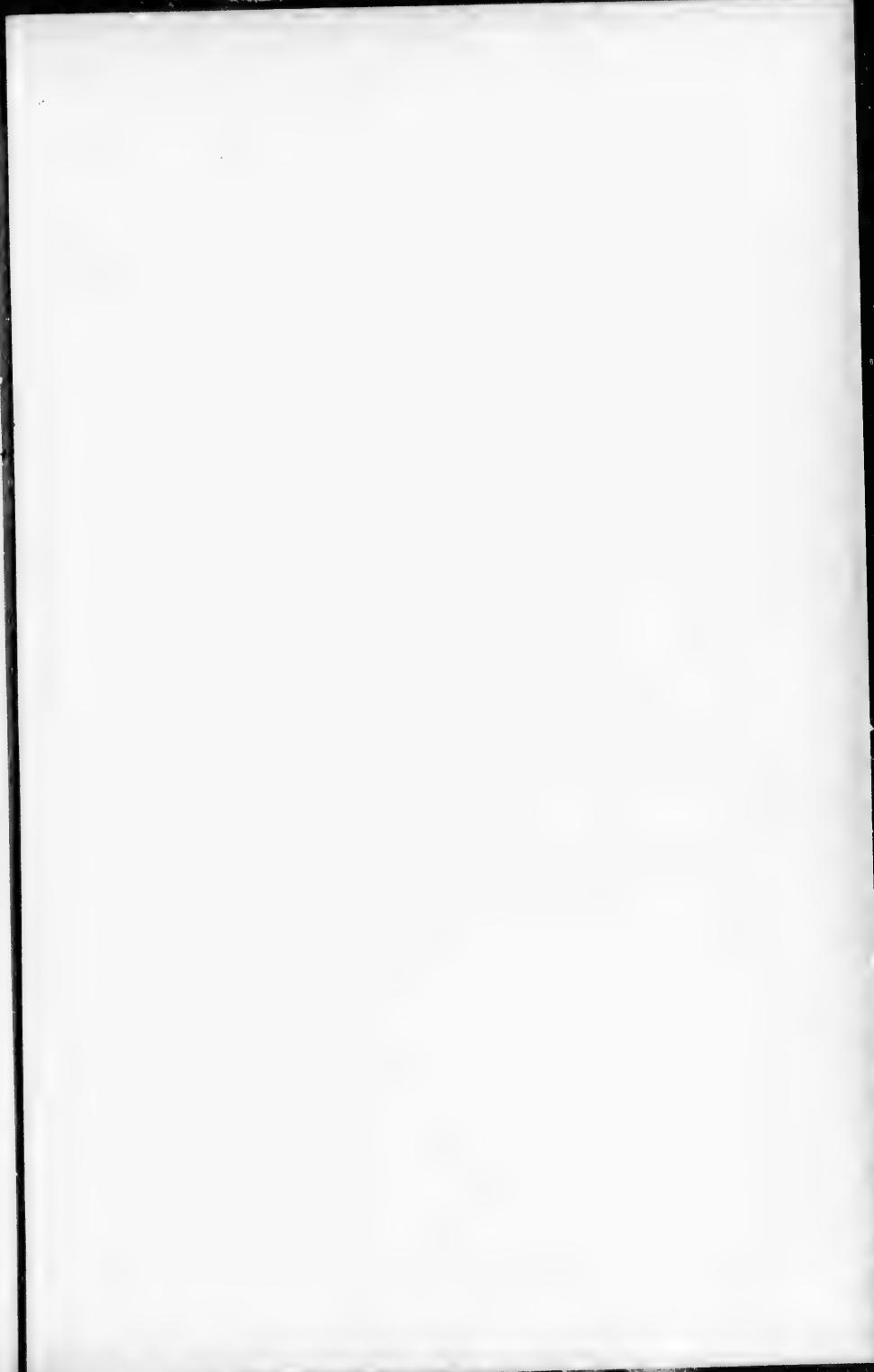
" . . . The Undersigned is instructed and authorized to say, that they utterly deny the existence of any right in this Republic to interrupt, molest, detain, or capture any vessels belonging to citizens of the United States of America, or any persona being citizens of those States, engaged in taking seals or whales or any species of fish or marine animals, in any of the waters, or on any of the shores or lands, of any or either of the Falkland Islands Tierra del Fuego, Cape Horn, or any of the adjacent islands in the Atlantic Ocean."

On the 10th July, 1832, the United States' Chargé d'Affaires wrote to the same Minister as follows :—

" But again, if it be admitted, hypothetically, that the Argentine Republic did succeed to the entire rights of Spain over these regions, and that when she succeeded, Spain was possessed of sovereign rights, the question is certainly worth examination whether the right to exclude American vessels and American citizens from the fisheries there is incident to such a succession to sovereignty."

" The ocean fishery is a natural right, which all nations may enjoy in common. Every interference with it by a foreign Power is a national wrong. When it is carried on within the marine league of the coast, which has been designated as the extent of national jurisdiction, reason seems to dictate a restriction, if, under pretext of carrying on the fishery, an evasion of the Revenue Laws of the country may reasonably be apprehended, or any other serious injury to the Sovereign, of the coast, he has a right to prohibit it; but, as such prohibition derogates from a natural right, the evil to be apprehended ought to be a real, not an imaginary one. No such evil can be apprehended on a desert and uninhabited coast; therefore, such coasts form no exception to the common right of fishing in the seas adjoining them. All the reasoning on this subject





applies to the large bays of the Ocean, the entrances to which cannot be defended; and this is the doctrine of Vattel, chapter 23, section 291, who expressly cites the Straits of Magellan as an instance for the application of the rule.

".... The Treaty concluded between Great Britain and Spain in 1790, already alluded to, is to be viewed, in reference to this subject, because both nations, by restricting themselves from forming settlements, evidently intended that the fishery should be left open, both in the waters and on the shores of these islands, and perfectly free, so that no individual claim for damages, for use of the shores, should ever arise. That case, however, could scarcely occur, for whales are invariably taken at sea, and generally without the marine league; and seals, on rocks and sandy beaches, incapable of cultivation. The stipulation in the Treaty of 1790 is clearly founded on the right to use the unsettled shores for the purpose of fishery, and secure its continuance."

Mr. Robert Greenhow, Librarian of the United States' Congress, in a series of articles written for "Hart's Merchants' Magazine," in February 1842, on the Falkland Islands, refers to the claim set up by Buenos Ayres respecting the jurisdiction of the Republic and the application of its laws and regulations, "especially those respecting the seal fishery on the coast."

Mr. Greenhow says:—

"To proceed another step in admissions. Supposing the Argentine Republic to have really and unquestionably inherited from Spain the sovereignty of the territories adjoining it on the south and the contiguous islands, that Government would still want the right to extend its 'Regulations respecting the seal fishery' to the unsettled portions of the coasts of those territories. That right was indeed assumed by Spain, with many equally unjust, which were enforced so long as other nations did not find it prudent to contest them. But as the Spanish power waned, other nations claimed their inprescriptible rights; they insisted on navigating every part of the open sea, and of its unoccupied straits and harbours, with such limitations only as each might choose to admit by Treaty with another; and they resorted to the North Pacific coasts of America for trade and settlement, and to the southernmost shores of the continent for the seal fishery, without regard for the exclusive pretensions of Spain to the sovereignty of those regions. *Of the hundreds of vessels, nearly all American, which annually frequented the coasts and seas above mentioned after 1870, not one was captured or detained by the Spanish authorities;* and long before the revolutions in Southern America began the prohibitory Decrees of the Court of Madrid and of its Governors relative to those parts of the world had become obsolete, and the warnings of its officers were treated as jests.

"The common right of all nations to navigate and fish in the open sea and in its indefensible straits, and to use their unsettled shores for temporary purposes, is now admitted among the principal Maritime Powers, and the stipulations in Treaties on those subjects are intended to prevent disputes as to what coasts are to be considered as unsettled; what straits are indefensible; within what distance from a settled coast the sea ceases to be open, &c.

"The Governments of Spanish American Republics have, however, in many instances exhibited a strong in disposition to conform with these and other such Regulations of national law, though clearly founded on justice and reason, and intended clearly for the benefit of the weak, to which class they all belong."

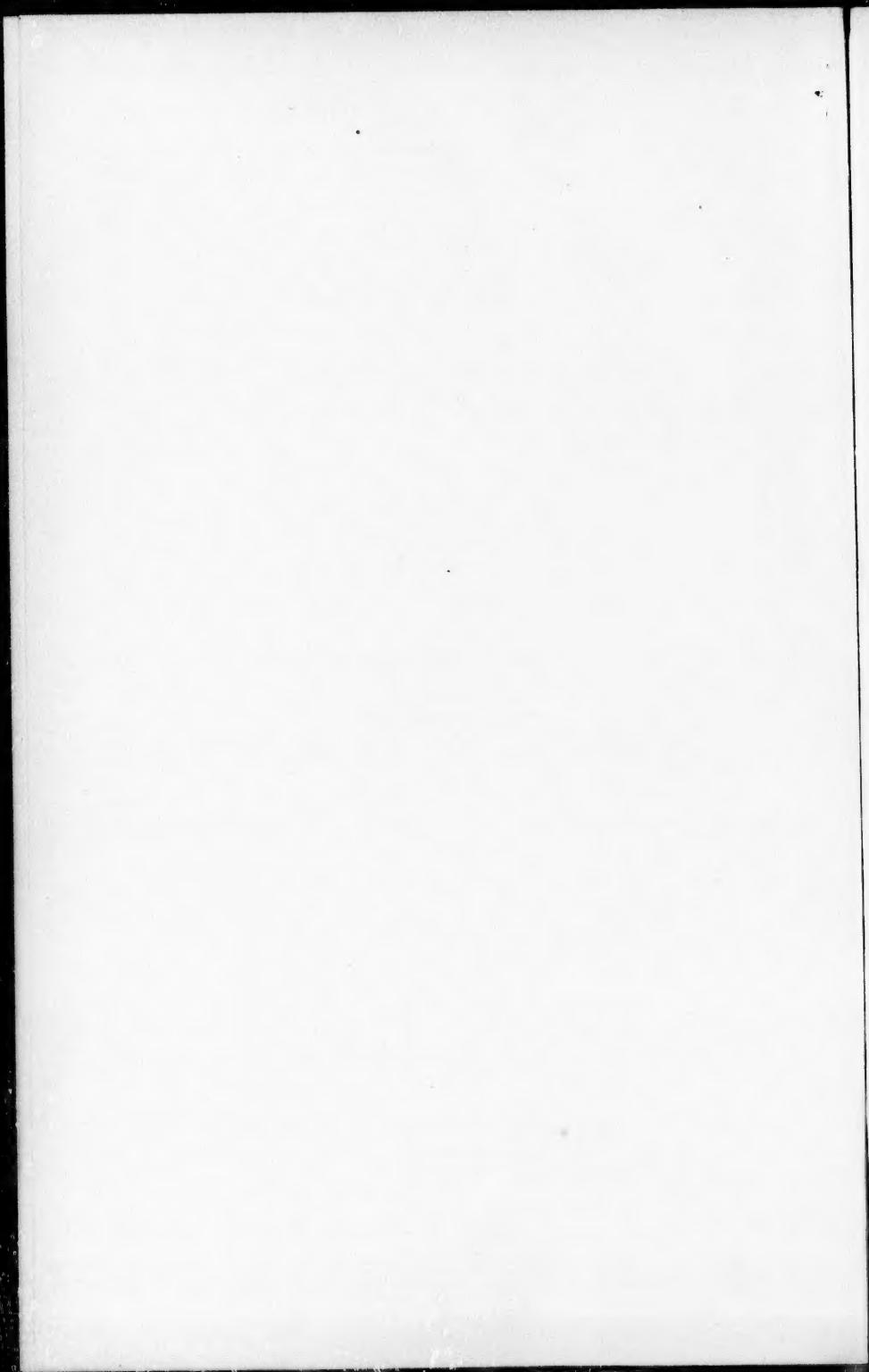
He also refers to the case of the "Harriet" as follows :--

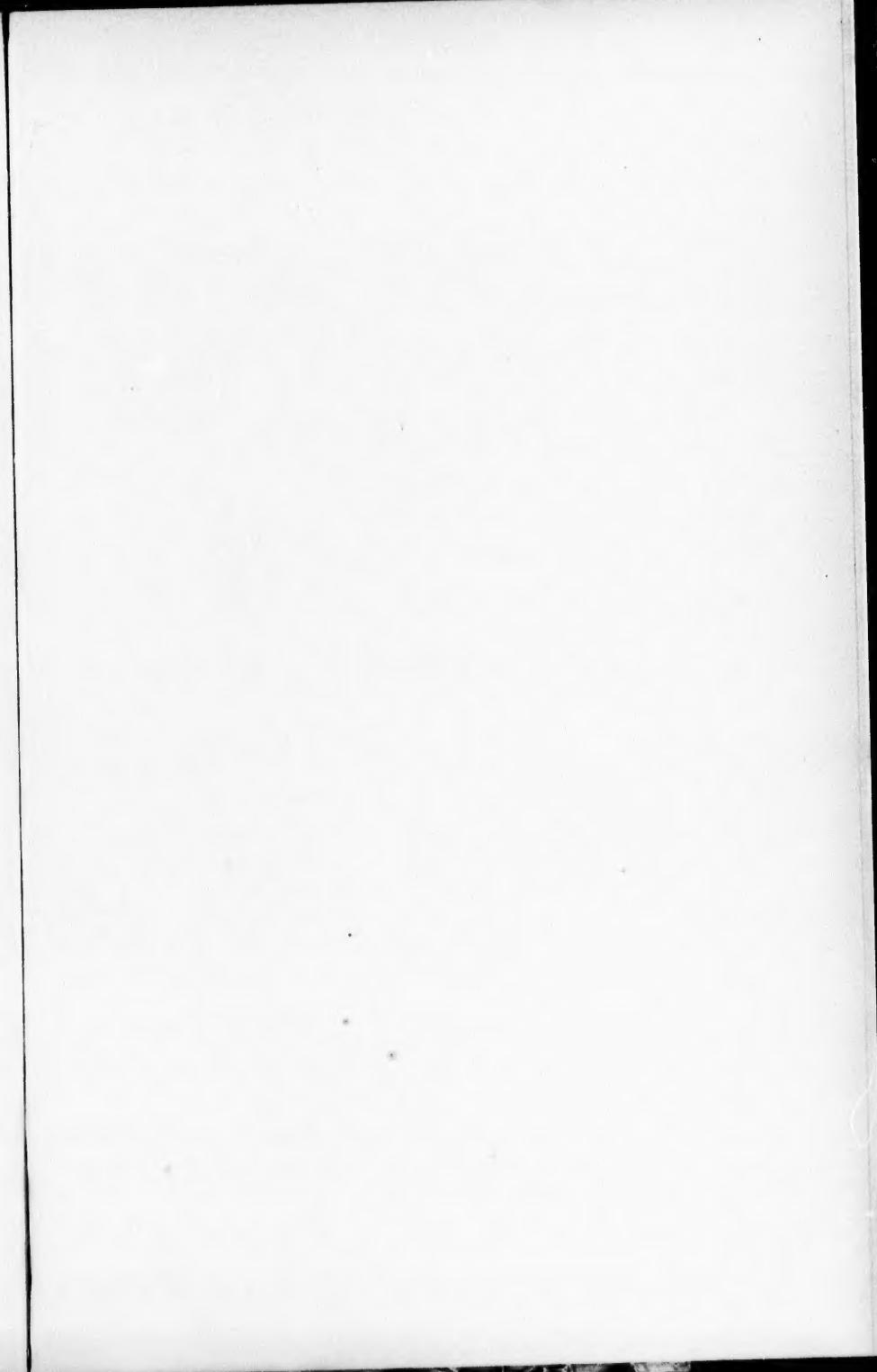
" The President at the same time declared that the name of the Republic of Buenos Ayres 'had been used, to cover with a show of authority, acts injurious to the commerce of the United States, and to the property and liberty of their citizens; for which reason he had given orders for the dispatch of an armed vessel to join the American squadron in the south seas, and aid in affording all lawful protection to the trade of the Union which might be required; and he should without delay send a Minister to Buenos Ayres to examine into the state of the circumstances, and also of the claim set up by that Government to the Falkland Islands.'

" The question had, however, become more complicated before the arrival of Mr. Baylies at Buenos Ayres.

"The 'Lexington' reached Berkeley Sound on the 28th December, and lay at the entrance, during a severe gale, until the 31st, when she went up and anchored in front of the harbour of Soledad. Boats were immediately sent ashore with armed seamen and marines, who made prisoners of Brisbane, Metcalf, and some other persons, and sent them on board the ship: the canon mounted before the place were at the same time spiked, some of the arms and ammunition were destroyed, and the seal-skins and other articles taken from the 'Harriet' and 'Superior' were removed from the warehouses, and placed in the schooner 'Dash' which carried them to the United States. Captain Duncan then gave notice to the inhabitants that the seal-fishery on those coasts was in future to be free to all Americans; and that the capture of any vessel of the United States would be regarded as an act of piracy; and having affixed a Declaration in writing to that effect on the Government-house, he took his departure, on the 22nd January, 1832, carrying with him in the 'Lexington' Brisbane and six other persons as prisoners, with many of the negroes and settlers as passengers."

The principle suggested in the question has been steadily ignored by all the Powers.





The Greenland seal-fishery was prosecuted from Dundee and Peterhead in Great Britain.

Norway was much interested.

In 1874 the Swedish Government suggested to Great Britain that some international arrangement might probably be attempted with a view of imposing restrictive regulations to remedy the evil attending the practice of hunters.

Parties interested in sealing, both in Great Britain and Norway, were at once consulted, and an Act ("Seal Fishery Act, 1875") was passed empowering Her Majesty the Queen by Order in Council to fix a close season within an area between 67° and 75° north latitude and 5° east and 17° west of Greenwich.

Representations were then made by Great Britain to foreign countries which might be interested, with a view of insuring reciprocal legislation on their part.

In 1875 the Governments chiefly interested, Norway, Germany, Holland, and Sweden, expressed a willingness to provide the necessary legislation.

From other Governments Great Britain received favourable replies, but from that of the United States the answer was as follows, and no other action was taken by that country.

"Department of State, Washington,

"Sir,

"October 1, 1875.

"Referring to your note of the 19th August and its accompaniments in relation to an Act of Parliament providing for the establishment of a close time for seal fishing in the waters adjacent to the eastern coast of Greenland, I have to thank you for the information, and have the honour to inform you that after consultation with the Secretary of the Treasury, it is the opinion of the Treasury, as well as of this Department, that the questions suggested in your note should be submitted to the attention of Congress.*

"I have, &c.,

(Signed) "HAMILTON FISH.

"The Right Honourable

"Sir E. Thornton, K.C.B."

An Order in Council in 1876 was passed in Great Britain so far as British subjects were concerned, but was revoked on ascertaining no action could be taken in Norway in that year.

By March 1877 the Governments of Norway,

* There is nothing to show that this was ever done.

Sweden, Germany, and Holland had all taken similar legislative action to that of Great Britain.

In 1879 Russia imposed similar restriction on her own subjects.

Mr. R. H. Dana, jun., in his speech on behalf of the United States before the Halifax Fisheries Commission in 1877, says:—

Record of the Proceedings of Halifax Fisheries Commission, 1877, p. 239.

"The right to fish in the sea is in its nature not real, as the common law has it, nor immovable, as termed by the civil law, but personal. It is a liberty. It is a franchise or a faculty. It is not property pertaining to or connected with the land. It is incorporeal; it is aboriginal. The right of fishing, dropping line or net into the sea, to draw from it the means of sustenance, is as old as the human race, and the limits that have been set about it have been set about it in recent and modern times, and wherever the fisherman is excluded a reason for excluding him should always be given. I speak of the free-swimming fish of the ocean, followed by the fishermen through the deep sea, not of the crustaceous animals, or of any of those that connect themselves with the soil under the sea or adjacent to the sea, nor do I speak of any fishing which requires possession of the land or any touching or troubling the bottom of the sea. I speak of the deep-sea fishermen who sail over the high seas pursuing the free-swimming fish of the high seas. Against them it is a question not of admission, but of exclusion. These fish are not property. Nobody owns them. They come we know not whence, and go we know not whither.

"They are no man's property; they belong by right of nature to those who take them, and every man may take them who can."

Treaty, September 30, 1800, France and United States, American State Papers, Foreign Relations, vol. ii, F. O., p. 295.

So, in 1800, the United States joined France in a declaration that the whale and seal fisheries were free in every quarter of the globe.